

# **Exhibit B**

5/14/2021 Juniper Networks, Inc., et al., v. Swarm Technology LLC Alfonso Íñiguez  
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<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION</p> <p>-----x</p> <p>JUNIPER NETWORKS, INC., and : APSTRA, INC., : : Plaintiffs, : : Case No. : vs. : : 3:20-cv-03137-JD : SWARM TECHNOLOGY LLC, : : Defendant. : -----x</p> <p>** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY ** ** PURSUANT TO PROTECTIVE ORDER **</p> <p>VIRTUAL VIDEOTAPE 30(b)(6) DEPOSITION OF SWARM TECHNOLOGY CORPORATE REPRESENTATIVE AND IN HIS INDIVIDUAL CAPACITY ALFONSO ÍÑIGUEZ Friday, May 14, 2021 9:04 a.m. Pacific Daylight Time</p> <p>REPORTER: Dawn A. Jaques, CSR, CLR</p> <p>DIGITAL EVIDENCE GROUP 1730 M Street, NW, Suite 812 Washington, D.C. 20036 (202) 232-0646</p>	<p>I-N-D-E-X WITNESS: PAGE: ALFONSO INIGUEZ Examination by Mr. Sigler 10 Examination by Mr. Kelly 214</p> <p>E-X-H-I-B-I-T-S INIGUEZ DEPOSITION EXHIBIT: PAGE: Exhibit 1 July 16, 2018, letter to Alexis B. Bjorlin of Intel from Michael Kelly SW-JU-JV-0000132 - 0000133 11</p> <p>Exhibit 2 July 16, 2018, letter to Tim Teter of NVIDIA from Michael Kelly SW-JU-JV-0000110 - 0000111 22</p> <p>Exhibit 3 July 16, 2018, letter to Thomas Wyatt of AppsDynamic from Michael Kelly SW-JU-JV-0000130 - 0000131 27</p> <p>Exhibit 4 July 16, 2018, letter to Brian Modoff of Qualcomm from Michael Kelly SW-JU-JV-0000126 - 0000127 27</p> <p>Exhibit 5 July 16, 2018, letter to Vincent Pangrazio of Cavium from Michael Kelly SW-JU-JV-0000118 - 0000119 28</p> <p>Exhibit 6 July 16, 2018, letter to Lawrence Ellison of Oracle from Michael Kelly SW-JU-JV-0000114 - 0000115 29</p>
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<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs: R. WILLIAM SIGLER, ESQ. 3 Fisch Sigler LLP 4 5301 Wisconsin Avenue, NW 5 Fourth Floor 6 Washington, D.C. 20015 7 PHONE: (202) 362-3520 8 EMAIL: bill.sigler@fischllp.com</p> <p>9 On behalf of the Defendant: MICHAEL K. KELLY, ESQ. 10 CHRISTINE JONES, ESQ. 11 TIMOTHY CASEY, ESQ. 12 Beus Gilbert McGroder 13 701 N. 44th Street 14 Phoenix, Arizona 85008 15 PHONE: (480) 429-3015 16 EMAIL: mkelly@beusgilbert.com 17 cjones@beusgilbert.com</p> <p>18 VIDEOGRAPHER AND EXHIBIT TECHNICIAN: 19 Billy Fahnert, Digital Evidence Group</p>	<p>1 INDEX (Continued) E-X-H-I-B-I-T-S 2 INIGUEZ DEPOSITION EXHIBIT: PAGE: 3 Exhibit 7 July 16, 2018, letter to 4 Brian Stevens of Google 5 from Michael Kelly 6 SW-JU-JV-0000112 - 0000113 31</p> <p>7 Exhibit 8 July 16, 2018, letter to 8 Katherine Adams of Google 9 from Michael Kelly 10 SW-JU-JV-0000116 - 0000117 31</p> <p>11 Exhibit 9 September 27, 2018, letter 12 to Michael Kelly from Denise 13 Kerstein of Apple 14 Re: Your Correspondence to Apple 15 SW-JU-JV-0000134 35</p> <p>16 Exhibit 10 December 5, 2014, letter to 17 Michael Kelly from Jeff Lasker 18 of Apple 19 SW-JU-JV-0000001 41</p> <p>20 Exhibit 11 Letter template from Michael Kelly 21 SW-JU-JV-0001349 47</p> <p>22 Exhibit 12 Letter template from Michael Kelly SW-JU-JV-0001393 51</p> <p>23 Exhibit 13 May 12, 2021, letter to Fisch 24 Sigler LLP from Elvis Sulejmani, 25 Paralegal of Beus Gilbert McGroder 26 (No Bates stamp) (3 pages) 59</p> <p>27 Exhibit 14 Notice of 30(b)(6) deposition 28 of Swarm Technology LLC 29 (No Bates number) (8 pages) 71</p> <p>30 Exhibit 15 July 16, 2018, letter to 31 Bikash Koley of Juniper Networks 32 from Michael Kelly 33 SW-JU-JV-0000124 - 0000125 87</p>

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<p>1           PROCEEDINGS</p> <p>2           THE VIDEOGRAPHER: We are on the</p> <p>3 record. This is the 30(b)(6) deposition of</p> <p>4 Swarm Technology LLC, represented by Alfonso</p> <p>5 Íñiguez, in the matter of Juniper Networks, Inc.,</p> <p>6 et al., vs. Swarm Technology LLC, in the</p> <p>7 United States District Court, Northern District of</p> <p>8 California, San Francisco Division.</p> <p>9           Name is Billy Fahnert; I am the video</p> <p>10 technician today. The court reporter is</p> <p>11 Dawn Jaques. We are here on behalf of Digital</p> <p>12 Evidence Group. Today's date is May 14th, 2021.</p> <p>13 The time is 9:04 a.m. Pacific Daylight Time.</p> <p>14           All parties have stipulated to the</p> <p>15 witness being sworn in remotely.</p> <p>16           Counsel, please identify yourselves</p> <p>17 for the record, and then the witness will be sworn</p> <p>18 in.</p> <p>19           MR. KELLY: Michael Kelly --</p> <p>20           MR. SIGLER: Good morning.</p> <p>21           MR. KELLY: Michael -- go ahead.</p> <p>22           MR. SIGLER: I'm Bill Sigler of</p>	<p>1           sir. I'm Bill Sigler, one of the attorneys</p> <p>2 representing Juniper and Apstra in the case.</p> <p>3 Thank you for joining us today.</p> <p>4           I want to start by asking you about a</p> <p>5 document that your lawyers produced to us.</p> <p>6           Mr. Fahnert, can you please put Tab A</p> <p>7 on the screen, and we'll mark that as Exhibit 1,</p> <p>8 please.</p> <p>9           (Iníguez Exhibit 1 was marked</p> <p>10 for identification.)</p> <p>11           BY MR. SIGLER:</p> <p>12           Q Mr. Íñiguez, can you see the document</p> <p>13 that we placed on the screen as Exhibit 1?</p> <p>14           A Yes, I can see.</p> <p>15           Q Okay. Do you see, sir, at the top of</p> <p>16 this document it's dated July 16th, 2018?</p> <p>17           A Can you repeat that? Because there</p> <p>18 was some noise in here that I couldn't hear your</p> <p>19 question.</p> <p>20           Q Sure. Do you see, sir, that this</p> <p>21 document is dated July 16th, 2018?</p> <p>22           A Yes. Yes, I can see that.</p>
<p>1           Page 10</p> <p>2           Fisch Sigler LLP in Washington, D.C., and I'm here</p> <p>3 today representing Juniper Networks and Apstra.</p> <p>4           MR. KELLY: I'm Michael Kelly of the</p> <p>5 law firm of Beus Gilbert McGroder in Phoenix,</p> <p>6 Arizona, representing the witness in both his</p> <p>7 individual capacity as Alfonso Íñiguez, the</p> <p>8 inventor of the patents, and in his representative</p> <p>9 capacity as a 30(b)(6) designee for the Defendant</p> <p>10 Swarm.</p> <p>11           THE REPORTER: Okay, sir, would you</p> <p>12 raise your right hand to be sworn, please?</p> <p>13           (The witness was administered the oath.)</p> <p>14           Whereupon,</p> <p>15           ALFONSO ÍÑIGUEZ,</p> <p>16           was called as a witness, after having been</p> <p>17 first duly sworn by the Notary Public,</p> <p>18 was examined and testified as follows:</p> <p>19           EXAMINATION BY COUNSEL FOR THE PLAINTIFFS</p> <p>20           BY MR. SIGLER:</p> <p>21           Q Good morning, Mr. Íñiguez.</p> <p>22           A Good morning.</p> <p>23           Q We haven't met -- we haven't before,</p>	<p>1           Page 12</p> <p>2           Q All right. And do you see, sir, right</p> <p>3 below that that it says that it's being sent via</p> <p>4 United States mail?</p> <p>5           A Yes.</p> <p>6           Q And it's addressed to Alexis B.</p> <p>7 BJORLIN. Is that correct, sir?</p> <p>8           A Yes, that's correct.</p> <p>9           Q And that individual is identified as a</p> <p>10 Corporate Vice President General Manager at Intel,</p> <p>11 right, sir?</p> <p>12           A Yes, that's correct.</p> <p>13           MR. KELLY: Mr. Sigler, I'm sorry, do</p> <p>14 you have a Bates number for this document?</p> <p>15           MR. SIGLER: The Bates number appears</p> <p>16 above the document on the screen.</p> <p>17           MR. KELLY: Oh, I see it up there.</p> <p>18 I'm sorry. I was looking for it. Okay,</p> <p>19 thank you.</p> <p>20           MR. SIGLER: No worries.</p> <p>21           BY MR. SIGLER:</p> <p>22           Q All right, Mr. Íñiguez, refocusing</p> <p>back on Exhibit 1, do you see at the top there</p>

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<p>1 that there's some letterhead, and Michael K. 2 Kelly's name is there? 3 A Yes, I see. Are you asking me if I 4 see Michael Kelly on the letterhead? 5 Q Yes. Is that Michael K. Kelly 6 identified there? 7 A Yes. 8 Q Who is Mr. Kelly? 9 A He's my attorney. At the time when I 10 send the letter, he was my patent attorney. 11 Q Okay. So he was serving as a lawyer 12 for Swarm at the time of this letter? 13 A Well, he was my -- I assume, yes. He 14 was my patent attorney, so he was, yes, 15 representing Swarm. 16 Q And Mr. Kelly is representing Swarm in 17 this case, right, sir? 18 A I'm having a problem hearing. I use 19 hearing aids, but can you raise the volume? 20 MS. JONES: I can try. 21 (Pause in the proceedings.) 22 THE WITNESS: Okay, ready? All right.</p>	<p>1 Swarm in about 2014? 2 A 2014? I would say yes. 3 Q Okay, thank you, sir. 4 A Yeah. 5 Q And have you seen this letter before, 6 sir? 7 A Yes, I have. 8 Q Did you look at this letter in 9 preparing for the deposition today? 10 A I did. 11 Q Let's focus now on the first paragraph 12 of the body of this letter to Mr. BJORLIN at 13 Intel, please. 14 Can you see that there, Mr. Íñiguez? 15 A Yes, I can see it. 16 Q All right. And the letter opens by 17 saying "The purpose of this letter is to highlight 18 a licensing opportunity," right, sir? 19 A Yes. 20 Q All right. And going to the next 21 sentence, it says, "In short, Swarm's research and 22 development efforts in IoT devices, edge</p>
<p>1 BY MR. SIGLER: 2 Q Are you ready, sir? 3 A Yes, I'm ready. 4 Q Okay, thank you. 5 And so Mr. Kelly is representing Swarm 6 in this case, right? 7 A Correct. 8 Q And how long have you known Mr. Kelly? 9 A I have known Mr. Kelly for 10 approximately seven years. 11 Q When did -- when did -- strike that. 12 When did Swarm first retain Mr. Kelly 13 to act as an attorney on its behalf? 14 A I don't have the exact date, but at 15 one point, around seven years ago, I contacted 16 Mr. Kelly, and he did patent and prosecution for 17 Swarm. 18 At that time, he was working for 19 another firm, Ingressia Fisher Lorenz is the name 20 of this Swarm [sic] -- of the company -- of the 21 firm. 22 Q So he first started doing work for</p>	<p>1 computing, intent-based autonomy, plug-and-play 2 robotics, and swarm processing systems (featured 3 at www.swarmtechnology.us) have yielded a 4 significant and growing global patent portfolio." 5 Do you see that, sir? 6 A Yes, I see it. 7 Q And then the letter goes on to state 8 that Swarm is currently seeking to license that 9 global patent portfolio, right, sir? 10 A Yes. 11 Q Okay. Mr. Fahnert, if you could back 12 out of that view and go to the remaining 13 paragraphs on the screen, please? 14 Sir, can you see that on your screen? 15 A Yes, I can see it. 16 Q All right. So would you agree with 17 me, sir, that this letter references Swarm's 18 '004 patent? 19 A Yes, it does. 20 Q And the letter also references Swarm's 21 '777 patent? 22 A Yes.</p>

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<p>1 Q All right. And below that, in point      2 three, it references a pending patent application      3 that ends in 480, right?</p> <p>4 A That's correct.</p> <p>5 Q And that 480 application became the      6 '275 patent at issue, right, sir?</p> <p>7 A That is correct.</p> <p>8 Q And do you understand, sir, that the      9 three patents at issue in this case are the '004,      10 '777, and '275 patents?</p> <p>11 A Yes.</p> <p>12 Q All right. Mr. Fahnert, can you      13 please take us to page 2 of this document?</p> <p>14 At the bottom there, Mr. Íñiguez, do      15 you see that you're copied on this letter?</p> <p>16 A Yes.</p> <p>17 Q And did you receive a copy of this      18 letter in July 2018 when it was sent?</p> <p>19 A Yes, I have a -- I received a copy of      20 the letter.</p> <p>21 Q All right. And the last paragraph in      22 the body of the letter says, "We would welcome the</p>	<p>1 that letter that you are showing me on the screen.      2 If that is the question, then the answer is yes.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q And that letter stated that Swarm      5 would welcome the opportunity to discuss exclusive      6 or non-exclusive patent licensing arrangements      7 with Intel, right, sir?</p> <p>8 A Yes.</p> <p>9 Q All right. Did Intel ever respond to      10 this letter?</p> <p>11 A I -- we did not get a response from      12 that letter.</p> <p>13 Q Did Mr. Kelly or any other      14 representatives of Swarm ever speak to Intel on      15 the phone about licensing Swarm's patents?</p> <p>16 MR. KELLY: Objection to the extent      17 answering that question would invade the      18 privilege.</p> <p>19 THE WITNESS: As far as I can      20 remember, we -- we never -- this -- we didn't get      21 a response on this letter.</p> <p>22 So if you're asking if we contacted</p>
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<p>1 opportunity to discuss exclusive or non-exclusive      2 patent licensing arrangements with you."</p> <p>3 Do you see that, sir?</p> <p>4 A Yes.</p> <p>5 Q So in July 2018, Swarm offered Intel      6 the opportunity to license Swarm's patents, right,      7 sir?</p> <p>8 MR. KELLY: Objection to the      9 foundation and to form.</p> <p>10 MR. SIGLER: Mr. Kelly, Judge Donato's      11 discovery order very strictly restricts speaking      12 objections. You should limit your objections to      13 form or scope, or if you have a privilege      14 instruction, please. It's in paragraph 13 of his      15 Order.</p> <p>16 BY MR. SIGLER:</p> <p>17 Q Mr. Íñiguez, I'm going to ask this      18 again. So in July 2018, Swarm offered Intel the      19 opportunity to license Swarm's patents, right,      20 sir?</p> <p>21 MR. KELLY: Objection as to form.</p> <p>22 THE WITNESS: On that date, we send</p>	<p>1 them by phone or other means, no, that was -- that      2 was this letter.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q So Swarm didn't have any further      5 communications beyond this letter with Intel about      6 licensing Swarm's patents?</p> <p>7 A We didn't get any communication.</p> <p>8 I don't know if we -- we provided a      9 list of companies to whom we sent letters. I      10 don't know if -- I cannot recall if we have sent a      11 previous letter to Intel.</p> <p>12 Q And what list of companies are you      13 referring to?</p> <p>14 A The companies that --</p> <p>15 Q Strike that. Strike that. I'm sorry,      16 that was a bad question.</p> <p>17 You said that Swarm provided a list of      18 companies to which it sent letters about licensing      19 Swarm's patents, right?</p> <p>20 A Well, when we produced the documents,      21 we provided all the letters that we sent, and all      22 that information is in your hands at this point.</p>

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<p>1 Q You referenced a list of companies 2 that Swarm sent letters to, right, sir?</p> <p>3 A When I say "list," I said they're 4 included in the -- in those -- in those files that 5 we produced. That's what I mean by "list."</p> <p>6 Q So the files that -- if I see a letter 7 like this, like the one we're looking at to Intel 8 on July 16, 2018, if I see that in these documents 9 that Swarm produced to me, that means it was sent?</p> <p>10 A Wait, let me see. I want to make sure 11 that I understood the question.</p> <p>12 You're asking -- can you please repeat 13 the question? I have to make sure that I'm 14 responding properly.</p> <p>15 Q Sure. No, and I understand. 16 I received this letter to Intel in the 17 production that Swarm provided to us in this case.</p> <p>18 If a letter like this is in the 19 production, does that mean that it was a letter 20 that Swarm actually sent at the time --</p> <p>21 A Yes.</p> <p>22 Q -- of the letter?</p>	<p>1 letter is also dated July 16, 2018?</p> <p>2 A Yes.</p> <p>3 Q And it also indicates that it's sent 4 by -- excuse me, strike that. 5 It also states that it was sent by 6 United States mail, right, sir?</p> <p>7 A Correct.</p> <p>8 Q And it's also from Mr. Kelly, right, 9 sir?</p> <p>10 A Yes, that's correct.</p> <p>11 Q And this one is addressed to Tim Teter 12 of NVIDIA, right, sir?</p> <p>13 A That's correct.</p> <p>14 Q And it's addressed to him specifically 15 in Santa Clara, California, right, sir?</p> <p>16 A That's correct.</p> <p>17 Q All right. And you can pull back out, 18 Mr. Fahnert. Thank you. 19 Mr. Íñiguez, do you recognize this as 20 the same letter that Swarm sent to Intel that we 21 looked at as Exhibit 1?</p> <p>22 A It is the -- it is essentially -- very</p>
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<p>1 A Yes.</p> <p>2 Q Okay. So, for example, if there's a 3 letter in that production to Google dated 4 July 13th, 2018, does that mean that Swarm 5 actually sent that letter to Google at that time 6 in July 2018?</p> <p>7 A Yes.</p> <p>8 Q Okay. Thank you, sir. 9 Mr. Fahnert, you can take that one off 10 the screen, and I'd like to move on to the 11 document that is Tab B, and mark that as 12 Exhibit 2. 13 (Iniguez Exhibit 2 was marked 14 for identification.) 15 BY MR. SIGLER: 16 Q Mr. Íñiguez, can you see Exhibit 2 on 17 the screen? 18 A Yes, I can see it. 19 Q All right. And do you recognize, 20 this, sir, as -- well, strike that. Let's go 21 through it. 22 Mr. Íñiguez, do you see that this</p>	<p>1 similar content, other than some names within -- 2 inside the letter. 3 Q All right. So at this time, 4 July 16th, 2018, Swarm sent out a set of letters 5 to different companies, right, sir?</p> <p>6 A Yes. 7 Q And each of those letters stated to 8 the addressee that Swarm would welcome the 9 opportunity to discuss exclusive or non-exclusive 10 patent licensing? 11 MR. KELLY: Could we see the second 12 page of this letter, please? 13 BY MR. SIGLER: 14 Q Mr. Íñiguez, I'm going to repeat my 15 question. 16 Did each of those letters sent 17 July 16, 2018, state that Swarm would welcome the 18 opportunity to discuss exclusive or non-exclusive 19 patent licensing arrangements with the addressee? 20 MR. KELLY: Could we please see 21 page 2? 22 MR. SIGLER: Mr. Kelly, do you have an</p>

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<p style="text-align: center;">Page 25</p> <p>1 objection?</p> <p>2 MR. KELLY: Yes. I have an objection</p> <p>3 as to the form.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Okay. Mr. Íñiguez, can you answer my</p> <p>6 question?</p> <p>7 A Yes, the answer is yes.</p> <p>8 Q So Swarm sent letters to many</p> <p>9 companies on July 16th, 2018, that said that Swarm</p> <p>10 would welcome the opportunity to discuss exclusive</p> <p>11 or non-exclusive patent licensing arrangements</p> <p>12 with them, right, sir?</p> <p>13 MR. KELLY: Objection, form.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Okay. And many of those companies --</p> <p>17 well, strike that.</p> <p>18 Many of those letters were sent to</p> <p>19 companies in California, right, sir?</p> <p>20 A Some of the companies are in</p> <p>21 California.</p> <p>22 Q All right. Did Swarm send a letter on</p>	<p style="text-align: center;">Page 27</p> <p>1 it this way too.</p> <p>2 Mr. Fahnert, you can take Exhibit 2</p> <p>3 off the screen, and let's pull up Tab C and mark</p> <p>4 that as Exhibit 3, please.</p> <p>5 (Íñiguez Exhibit 3 was marked</p> <p>6 for identification.)</p> <p>7 BY MR. SIGLER:</p> <p>8 Q Do you see Exhibit 3 on the screen in</p> <p>9 front of you, Mr. Íñiguez?</p> <p>10 A Yes, I see it.</p> <p>11 Q All right. And so would you agree</p> <p>12 with me, sir, that Swarm sent this same letter</p> <p>13 that we've been discussing in Exhibits 1 and 2 to</p> <p>14 AppsDynamic in San Francisco, California, on</p> <p>15 July 16, 2018?</p> <p>16 A Yes.</p> <p>17 Q All right. Mr. Fahnert, you can pull</p> <p>18 that down and please put up Tab D, which we'll</p> <p>19 mark as Exhibit 4.</p> <p>20 (Íñiguez Exhibit 4 was marked</p> <p>21 for identification.)</p>
<p style="text-align: center;">Page 26</p> <p>1 July 16th -- well, strike that.</p> <p>2 Did Swarm send one of those letters on</p> <p>3 July 16th, 2018, to NVIDIA?</p> <p>4 A The letter that you're showing on the</p> <p>5 screen? Yes.</p> <p>6 Q All right. And sent to NVIDIA in</p> <p>7 California, right, sir?</p> <p>8 A That is correct.</p> <p>9 Q And did Swarm also send this same</p> <p>10 letter in 2018 to a company called AppsDynamic in</p> <p>11 California?</p> <p>12 MR. KELLY: Objection, form.</p> <p>13 THE WITNESS: Can you show me that</p> <p>14 letter? I would like to see it.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Okay. Are you familiar with a company</p> <p>17 called AppsDynamic?</p> <p>18 A I am, but I'm not -- I don't know if</p> <p>19 the date that you're quoting matches what you're</p> <p>20 saying, so I would have to see the letter.</p> <p>21 Q Fair enough. Fair enough. I'm just</p> <p>22 trying to use our time efficiently, but we can do</p>	<p style="text-align: center;">Page 28</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Mr. Íñiguez, can you see Exhibit 4 on</p> <p>3 your screen?</p> <p>4 A Yes, I can see it.</p> <p>5 Q All right, sir. So based on</p> <p>6 Exhibit 4, did Swarm send Qualcomm in San Diego,</p> <p>7 California, the same letter that we've been</p> <p>8 discussing in July 2018?</p> <p>9 A Yes. Again, with some changes in</p> <p>10 names, the essence of the letter is the same.</p> <p>11 Q All right. And the essence of the</p> <p>12 letter was that Swarm would like to discuss patent</p> <p>13 licensing arrangements with Qualcomm, right?</p> <p>14 A Correct.</p> <p>15 Q All right. Mr. Fahnert, you can take</p> <p>16 that one down, and let's please move on to Tab E,</p> <p>17 which we'll mark as Exhibit 5.</p> <p>18 (Íñiguez Exhibit 5 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Mr. Íñiguez, do you see Exhibit 5 on</p> <p>22 the screen there?</p>

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<p>1 A I can see the letter.</p> <p>2 Q And this letter is also dated July 16,</p> <p>3 2018, right?</p> <p>4 A Correct.</p> <p>5 Q And this letter is addressed to a</p> <p>6 gentleman at Cavium in San Jose, California,</p> <p>7 right?</p> <p>8 A That is correct.</p> <p>9 Q And like the others -- well, the --</p> <p>10 strike that.</p> <p>11 Like the other letters we've been</p> <p>12 discussing, this one offers Cavium the opportunity</p> <p>13 to discuss exclusive or non-exclusive patent</p> <p>14 licensing arrangements with Swarm, right?</p> <p>15 A Correct.</p> <p>16 Q Okay, Mr. Fahnert, you can take that</p> <p>17 one down, and let's please move on to Tab F, and</p> <p>18 mark that as Exhibit 6, I believe.</p> <p>19 (Iniguez Exhibit 6 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. SIGLER:</p> <p>22 Q All right, Mr. Íñiguez, do you have</p>	<p>1 (Iniguez Exhibit 7 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Mr. Íñiguez, do you see that Exhibit 7</p> <p>5 is also dated July 16th, 2018?</p> <p>6 A That is correct.</p> <p>7 Q And it's addressed to Brian Stevens at</p> <p>8 Google in Mountain View, California, right?</p> <p>9 A Yes.</p> <p>10 Q And similar to the other letters we've</p> <p>11 seen so far today, this one offers Google the</p> <p>12 opportunity to discuss licensing Swarm's patents,</p> <p>13 right?</p> <p>14 A That is correct.</p> <p>15 Q All right. Mr. Fahnert, you can take</p> <p>16 that one down, please, and let's move on to Tab H,</p> <p>17 and mark that as Exhibit 8.</p> <p>18 (Iniguez Exhibit 8 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Mr. Íñiguez, do you see that this is a</p> <p>22 letter dated July 16, 2018?</p>
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<p>1 Exhibit 6 on your screen there?</p> <p>2 A Yes, I can see it.</p> <p>3 Q And do you see that this is a letter</p> <p>4 dated July 16, 2018?</p> <p>5 A Yes.</p> <p>6 Q And it's addressed to Larry Ellison,</p> <p>7 the chairman of Oracle in Redwood Shores,</p> <p>8 California, right?</p> <p>9 A Yes. Could you please zoom in? It's</p> <p>10 a little hard to read.</p> <p>11 Q Sure.</p> <p>12 A Okay, thank you.</p> <p>13 Yes, the answer is yes.</p> <p>14 Q All right. And similar to the other</p> <p>15 letters we've been looking at, this letter also</p> <p>16 highlights a licensing opportunity for Oracle to</p> <p>17 license some of its patents, right, sir?</p> <p>18 A Yes.</p> <p>19 Q All right, Mr. Fahnert, you can put --</p> <p>20 excuse me, take that one down, and let's please</p> <p>21 put Tab G up on the screen, and mark that as</p> <p>22 Exhibit 7.</p>	<p>1 A Yes.</p> <p>2 Q All right. And it's addressed to</p> <p>3 Katherine Adams, the General Counsel of Apple, in</p> <p>4 Cupertino, California, right?</p> <p>5 A That is correct.</p> <p>6 Q And this letter also, like the other</p> <p>7 ones -- well, strike that.</p> <p>8 This letter offers Apple the</p> <p>9 opportunity to discuss licensing Swarm's patents,</p> <p>10 right, sir?</p> <p>11 A Yes.</p> <p>12 Q All right. I have some follow-up</p> <p>13 questions on some of these entities.</p> <p>14 Do you know if NVIDIA ever responded</p> <p>15 to the letter that Swarm sent them in July 2018?</p> <p>16 A We did not get a response from NVIDIA.</p> <p>17 Q Did you get a response from</p> <p>18 AppsDynamic?</p> <p>19 A No.</p> <p>20 Q Let me back up for a second.</p> <p>21 Has Swarm -- other than the July 16,</p> <p>22 2018, letter, has Swarm sent any other letters or</p>

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<p>1 emails or other communications to NVIDIA?</p> <p>2 A Again, I would have to go back to all</p> <p>3 the files that we produced to see an earlier</p> <p>4 letter to NVIDIA. I don't recall this on the top</p> <p>5 of my head.</p> <p>6 Q Okay. After the July 16, 2018, letter</p> <p>7 to Qualcomm, did Swarm have any additional</p> <p>8 communications with Qualcomm?</p> <p>9 A Same answer as for NVIDIA. I -- well,</p> <p>10 they did not respond, and again, when you say</p> <p>11 "additional communication," I would have to go</p> <p>12 back to all the documents that we produced to find</p> <p>13 any other document.</p> <p>14 Q Do you recall as you sit here today</p> <p>15 any further communications with Qualcomm?</p> <p>16 A No, I don't recall any communication</p> <p>17 with Qualcomm.</p> <p>18 Q All right. And sitting here today, do</p> <p>19 you recall any further communications with Cavium?</p> <p>20 A No, no. No communication with Cavium.</p> <p>21 Q All right. And sitting here today, do</p> <p>22 you recall any further communications between</p>	<p>1 a notice that he sent later on, a notice that he</p> <p>2 sent -- he used his -- a Google.com email;</p> <p>3 however, he was not contacting me in the name of</p> <p>4 Google. He was contacting me in the name of</p> <p>5 Global Ventures, his company.</p> <p>6 Q Okay, we'll come back to that in a</p> <p>7 bit.</p> <p>8 Mr. Fahnert, can you please put Tab I</p> <p>9 on the screen, and we'll mark that as Exhibit 9.</p> <p>10 (Íñiguez Exhibit 9 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Mr. Íñiguez, do you have Exhibit 9 on</p> <p>14 your screen?</p> <p>15 A Yes, I can see it.</p> <p>16 Q All right. And if you can blow up the</p> <p>17 whole thing, Mr. Fahnert, that would be great.</p> <p>18 Thank you.</p> <p>19 All right. And do you see, sir, that</p> <p>20 this is a September 27th, 2018, letter?</p> <p>21 A Yes, I can see it.</p> <p>22 Q And it's addressed to Mr. Kelly, your</p>
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<p>1 Swarm and Oracle?</p> <p>2 A No communication.</p> <p>3 Q All right. And do you recall any</p> <p>4 further communications between Swarm and Google?</p> <p>5 A Swarm -- what is the name of the</p> <p>6 company?</p> <p>7 Q Google.</p> <p>8 A Which one?</p> <p>9 Q Google.</p> <p>10 A Oh, Google. No, no.</p> <p>11 There's -- there's a person there</p> <p>12 who -- I did not have any communication with</p> <p>13 Google, that's it.</p> <p>14 Q You said there is a person there.</p> <p>15 What did you mean by that?</p> <p>16 A Yes. On the documents that we</p> <p>17 produced, there is a person there that has a -- is</p> <p>18 an investor. I think it's called Global -- Global</p> <p>19 Ventures, and you have seen that on the documents</p> <p>20 that we produced.</p> <p>21 And when I -- when he send me the</p> <p>22 email in order to provide the pitch deck, he sent</p>	<p>1 attorney, correct?</p> <p>2 A Correct.</p> <p>3 Q And it's from Denise Kerstein of</p> <p>4 Apple, Inc., right, sir?</p> <p>5 A Correct.</p> <p>6 Q And let's go to the second paragraph,</p> <p>7 please. It says, "We would like to thank you for</p> <p>8 the offer to sell or license your patent(s) to</p> <p>9 Apple as a business opportunity."</p> <p>10 Do you see that, sir?</p> <p>11 A Yes, I see it.</p> <p>12 Q All right. So here Apple is thanking</p> <p>13 Swarm for the offer to sell or license its patents</p> <p>14 to Apple, right?</p> <p>15 MR. KELLY: Objection.</p> <p>16 THE WITNESS: I see it, yes.</p> <p>17 BY MR. SIGLER:</p> <p>18 Q All right. And Apple goes on to</p> <p>19 say that -- well, strike that.</p> <p>20 This letter goes on to say "Apple is</p> <p>21 not interested in purchasing or licensing them."</p> <p>22 Do you see that, sir?</p>

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<p>1 A Yes, I see that.</p> <p>2 Q Did Swarm respond to this letter from</p> <p>3 Ms. Kerstein?</p> <p>4 A From that letter? No. That was the</p> <p>5 end of the communication.</p> <p>6 Q Why didn't Swarm respond to Apple's</p> <p>7 letter?</p> <p>8 MR. KELLY: Objection.</p> <p>9 THE WITNESS: Because the letter from</p> <p>10 Swarm to Apple said that this is an opportunity, a</p> <p>11 licensing opportunity, and then Apple responded</p> <p>12 that it's not -- it's not interested in that</p> <p>13 opportunity, and that was the end of it.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Okay. Swarm also sent a letter in</p> <p>16 July 2018 to Juniper, right?</p> <p>17 A Can you show me the letter? Because</p> <p>18 I'm not sure about the date that you're referring.</p> <p>19 I would like to see it.</p> <p>20 Q Okay, we'll get to that. Let me make</p> <p>21 it less specific than that.</p> <p>22 Swarm has also sent some letters to</p>	<p>1 Q Okay. All right, sir.</p> <p>2 We can take the Apple document off the</p> <p>3 screen, Mr. Fahner. Thank you.</p> <p>4 All right, so based on the exhibits</p> <p>5 we've seen together so far, Mr. Íñiguez, you'd</p> <p>6 agree that Swarm sent letters in 2018 to Apple,</p> <p>7 NVIDIA, Google, Oracle, Cavium, Qualcomm, and</p> <p>8 AppsDynamic and Intel offering them an opportunity</p> <p>9 to license Swarm's patents, right, sir?</p> <p>10 MR. KELLY: Object. Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. SIGLER:</p> <p>14 Q All right. And why did Swarm send</p> <p>15 those letters to these particular companies in</p> <p>16 2018?</p> <p>17 A Because, as I mention in that letter,</p> <p>18 it was a good match between what Swarm had to</p> <p>19 offer and what those companies have to offer, and</p> <p>20 for that reason, we presented an opportunity.</p> <p>21 Q Who made the decision about which</p> <p>22 companies to send that letter to?</p>
<p>1 Juniper, right?</p> <p>2 A At one point, I did send letters to</p> <p>3 Juniper.</p> <p>4 Q And those letters similarly offered</p> <p>5 the opportunity to license Swarm's patents, right?</p> <p>6 A Yes, they offered the --</p> <p>7 MR. KELLY: Objection to the form of</p> <p>8 that question.</p> <p>9 BY MR. SIGLER:</p> <p>10 Q And Juniper provided some responses</p> <p>11 stating that they weren't interested in licensing</p> <p>12 Swarm's patents, right?</p> <p>13 A Can you show me the correspondence</p> <p>14 that you're referring to?</p> <p>15 Q Yeah, we'll get to that in a bit.</p> <p>16 We'll get to that in a bit.</p> <p>17 You don't recall that, though, that</p> <p>18 Juniper told Swarm that it wasn't interested in</p> <p>19 licensing Swarm's patents?</p> <p>20 A In order to provide a truthful answer,</p> <p>21 it's not a simple yes or no. I would like to see</p> <p>22 the letter and elaborate on the topic.</p>	<p>1 MR. KELLY: Objection.</p> <p>2 THE WITNESS: It was a --</p> <p>3 MR. KELLY: I'm going to instruct the</p> <p>4 witness not to answer to the extent that would</p> <p>5 invade the attorney-client privilege.</p> <p>6 MR. SIGLER: Yeah, my question is just</p> <p>7 who. I'm not asking for the content of the</p> <p>8 discussion. So who made that decision?</p> <p>9 THE WITNESS: I did.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q Okay. And so, for example, why did</p> <p>12 you decide to send the letter to NVIDIA that we</p> <p>13 saw?</p> <p>14 MR. KELLY: Object to that question to</p> <p>15 the extent it calls for attorney-client privileged</p> <p>16 information.</p> <p>17 THE WITNESS: Because Swarm provides a</p> <p>18 computer architecture that is a good match for any</p> <p>19 of those companies.</p> <p>20 MR. SIGLER: Okay. Mr. Fahner, could</p> <p>21 we please put Tab J on the screen, and let's mark</p> <p>22 that as Exhibit 10.</p>
	10 (Pages 37 to 40)

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<p>1        (Iniguez Exhibit 10 was marked 2              for identification.) 3        THE VIDEOGRAPHER: My apologies. It 4              appears I lost internet and got booted out of 5              Zoom. 6        MR. SIGLER: Okay, no worries. We'll 7              wait while you straighten it out. 8        THE VIDEOGRAPHER: Okay, I should be 9              all set, so stand by and we can be recording 10             again. Okay, back on record. The time is 9:41. 11       BY MR. SIGLER: 12       Q All right. And Mr. Fahnert, we wanted 13              to put Tab J on the screen, please, and we'll 14              identify that as Exhibit 10. Thank you, sir. And 15              if you could, Mr. Fahnert, if you could just blow 16              up the top half of that document, please? 17       All right, Mr. Íñiguez, can you see 18              Exhibit 10 on your screen? 19       A Yes, I see it. 20       Q And do you see that it's dated 21              December 5, 2014, sir? 22       A Yes.</p>	<p>1        A We have the content of the letter, and 2              we have the email that shows when I approved that 3              content of that letter. 4        Q Okay. Where would that letter itself 5              be located? 6        A The letter that Apple received? I 7              don't know if Apple has kept it; perhaps they 8              have. 9        Q Where did Swarm search for that 10             letter? 11       A I do not have -- if you follow the 12              email thread, you can see that I was given to 13              approve the content of the letter, and I approved 14              it, and then the letter was sent by the firm. 15       I do not have a copy of that letter. 16       Q And I don't have a copy of the email 17              you're talking about, as far as I know, so, 18              Counsel, we're going to ask for a copy of that 19              email that apparently shows that this letter -- 20              excuse me, that a letter was sent to Apple by 21              Swarm in 2014. 22       MR. KELLY: Mr. Sigler, I'm fairly</p>
<p>1        Q And it's addressed to your attorney, 2              Mr. Kelly, right, sir? 3       A Yes. 4       Q And actually, if you could back out, 5              Mr. Fahnert, and show us the bottom, please. 6       Thank you, sir. 7       And Mr. Íñiguez, this letter is from 8              Jeff Lasker of Apple Inc., right, sir? 9       A Yes. 10       Q Mr. Fahnert, if we could go to that 11              top paragraph again, please, sir. 12       And Mr. Íñiguez, the letter starts -- 13              the letter from Mr. Lasker starts by saying, "I've 14              been asked to respond to your letter to Apple." 15       Do you see that, sir? 16       A Correct. 17       Q And did Swarm send a letter to Apple 18              in 2014? 19       A Yes. 20       Q And do you understand, sir, that we've 21              asked Swarm to provide that letter, but we've been 22              told Swarm doesn't have it?</p>	<p>1        certain that that was included in the documents we 2              produced. 3       And we can do this on or off the 4              record, but just to clarify, that was seven years 5              ago, and that was two law firms ago for me. We 6              don't have that letter. I assumed that 7              Mr. Iniguez did. He doesn't have it either. 8       So what we did, in an effort to 9              respond to your request regarding contacts with 10              California, we provided you a list of the names of 11              the companies that each of the same template 12              letters went to, and we provided you that template 13              letter. 14       I don't have copies. If you need 15              them, you can subpoena Ingrassia, or I've offered 16              in the past to contact them informally and see if 17              we can get hard copies. 18       They're a paperless law firm. They're 19              a prosecution firm primarily, and they don't 20              maintain paper copies, to my recollection. I 21              haven't been there in seven years, though. 22       But you do have a list of all the</p>

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<p style="text-align: right;">Page 45</p> <p>1 contacts, and you have the template letter.      2 BY MR. SIGLER:      3 Q And just for clarity, did anyone on      4 behalf of Swarm ask that firm for copies of these      5 letters?      6 A I did not.      7 MR. SIGLER: Mr. Kelly, did outside      8 counsel ask that firm, on behalf of Swarm, for      9 copies of those letters?      10 MR. KELLY: That would invade the      11 attorney-client privilege.      12 Mr. Sigler, I will represent to you      13 that we made the good-faith decision that we were      14 fully responsive to your request for contacts by      15 giving you the names of every company that letter      16 went to, and giving you the letter.      17 If we had the letter as well, we'd      18 give it to you, but we don't.      19 MR. SIGLER: All right, and we'll get      20 to that, but of course, as experienced counsel,      21 you understand that those are Mr. Íñiguez's and      22 Swarm's files. They have every right to those</p>	<p style="text-align: right;">Page 47</p> <p>1 That was seven years ago, and they      2 have a document retention policy that doesn't      3 retain documents.      4 Do you want me to -- if Judge Donato      5 requires me to call them, I certainly will. I      6 don't know that that's going to result in getting      7 you the letters, but I'll do whatever the Court      8 instructs.      9 MR. SIGLER: Well, let's see what the      10 testimony is, if it's consistent with your      11 representations, Mr. Kelly. Hopefully, it will      12 be.      13 Mr. Íñiguez -- and actually,      14 Mr. Fahnert, you can take this document off the      15 screen, please.      16 All right, let's put -- apologies.      17 Let's put Tab XX on the screen, please, and mark      18 that -- well, actually, Mr. Fahnert, strike that.      19 Let's put Tab YY on the screen, please, and mark      20 that as Exhibit 11.      21 (Iniguez Exhibit 11 was marked      22 for identification.)</p>
<p style="text-align: right;">Page 46</p> <p>1 files from the law firm, and should --      2 MR. KELLY: I don't know that --      3 MR. SIGLER: -- and should have      4 asked -- and should have asked the firm for those.      5 Those are within your possession, custody and      6 control. So we're going to note --      7 MR. KELLY: They are not --      8 MR. SIGLER: -- on the record that --      9 MR. KELLY: Mr. Sigler, they are not      10 in our custody and control. They are not.      11 MR. SIGLER: Well, Swarm, as the      12 client, has a right to those materials under the      13 law, and they should have been produced.      14 MR. KELLY: Mr. Sigler, you're      15 explaining -- trying to instruct me as to how I      16 need to handle my client. We've handled it      17 entirely properly, I assure you.      18 If we had the letters, we'd give them      19 to you. We don't, so we gave you the names of the      20 recipients and the template form of the letter,      21 which we represent to you is identical in every      22 case.</p>	<p style="text-align: right;">Page 48</p> <p>1 BY MR. SIGLER:      2 Q All right, Mr. Íñiguez, do you have      3 Exhibit 11 on the screen in front of you, sir?      4 A Yeah. Can you please zoom in?      5 Q Yeah. Mr. Fahnert, can you zoom in,      6 please? Thank you.      7 Do you recognize this document,      8 Mr. Íñiguez?      9 A Yes, I do.      10 Q And is this the template of the letter      11 that Swarm sent to Apple in 2014?      12 A Yes, that's correct.      13 Q And did you review this template at      14 the time in 2014?      15 A Did I -- can you repeat that question?      16 Q Well, let me back up.      17 Who wrote this letter in 2014?      18 MR. KELLY: Object to form.      19 THE WITNESS: Assuming -- can you      20 repeat the question?      21 BY MR. SIGLER:      22 Q Sure. Who wrote this letter in 2014?</p>

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<p>1           MR. KELLY: Same objection.      2           THE WITNESS: This letter was written      3       in conjunction with my patent attorney.      4           BY MR. SIGLER:      5           Q   And your patent attorney was      6       Mr. Kelly, right?      7           A   Correct.      8           Q   So you helped write this letter; is      9       that right?      10          MR. KELLY: Objection.      11          THE WITNESS: Mr. Sigler, I am not an      12       attorney. I basically conveyed the information      13       that I want to present, and then my attorney takes      14       care of the mechanics of writing the letter.      15           BY MR. SIGLER:      16           Q   Okay. So did Mr. Kelly write this      17       letter?      18          MR. KELLY: Objection.      19          THE WITNESS: Again, as I mentioned      20       before, I provided -- provided the idea that I      21       wanted to convey, and my attorney, Mr. Kelly,      22       wrote -- put this in writing.</p>	<p>1           (Iníguez Exhibit 12 was marked      2       for identification.)      3           BY MR. SIGLER:      4           Q   Okay, so Mr. Íñiguez, do you see      5       Exhibit 12 in front of you there?      6           A   I can see it.      7           Q   Okay. Do you recognize this as a      8       template of the letter that was sent to Apple and      9       others in 2014?      10          A   Is that the same letter you showed me      11       a minute before, or is that a different letter?      12          Q   Well, I got two templates from your      13       counsel, and so I'm trying to determine what might      14       be different between these two letters, but I      15       can't really answer that on my own.      16          So do you recall there being two      17       different templates for the letter that went out      18       in 2014?      19          A   Can you show me the differences      20       between those two letters?      21          Q   Sure. Let's stick with this one for a      22       moment. If we could go to the paragraph that</p>
<p style="text-align: center;">Page 50</p> <p>1           BY MR. SIGLER:      2           Q   Okay, understood. That's all I was      3       trying to determine. Okay.      4           And this -- well, strike that.      5           If you actually go down, Mr. Fahner,      6       please, to the signature. The letter states that      7       it's from Mr. Kelly, right, sir?      8           A   Correct.      9           Q   All right. And we actually got two      10       templates from your attorney, so if we could take      11       this one off the screen, and we may come back to      12       it, Mr. Fahner, but if you take that off and put      13       up YY, please -- or excuse me, yes, Tab -- was      14       that Tab YY, Mr. Fahner? I'm sorry.      15          THE VIDEOGRAPHER: That was Tab YY,      16       yes.      17          MR. SIGLER: Let's go Tab XX, please.      18          MR. KELLY: Is this 12?      19          MR. SIGLER: I was going to just ask.      20       Am I correct that this is Exhibit 12?      21          THE VIDEOGRAPHER: This is 12.      22          MR. SIGLER: Okay, thank you, sir.</p>	<p style="text-align: center;">Page 52</p> <p>1       starts with "Mr. Íñiguez," please.      2           A   Yes, I can see that.      3           Q   Okay, you can see that, all right.      4           And then, Mr. Fahner, would it be      5       possible to put up that same paragraph from the      6       other letter, please, Exhibit 11?      7           A   Yes, it's possible.      8           (Exhibits 11 and 12 displayed      9       on Zoom screen.)      10          BY MR. SIGLER:      11          Q   All right, do you see those there,      12       Mr. Íñiguez?      13          A   Yes, I see.      14          Q   All right. And on the first letter      15       that we see at the top of the screen there, it      16       appears to contain less information than the      17       second -- that the second letter.      18          Do you see in the second letter it      19       says -- it mentions that you held key positions at      20       Motorola and Freescale, sir?      21          A   Yes, I can see that.      22          Q   And do you see that in the other</p>

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<p>1 letter that's shown above that?</p> <p>2 A It's not there.</p> <p>3 Q And in the last sentence of this</p> <p>4 paragraph in the bottom letter, it says that</p> <p>5 you're a leading contributor, and references the</p> <p>6 IEEE, refers to DesignCon and DVCon as the</p> <p>7 dominant technical conferences.</p> <p>8 Do you see that, sir?</p> <p>9 A Yes. For multiple years, I was a</p> <p>10 member of the Technical Committee for those two</p> <p>11 conferences, DesignCon and DVCon. And what I did</p> <p>12 was a -- I helped with the review -- the peer</p> <p>13 review of papers submitted to conferences.</p> <p>14 Q And we can -- Mr. Fahnert, if you</p> <p>15 could back out of these paragraphs, and let's go</p> <p>16 to -- let's focus on -- excuse me. Let's focus on</p> <p>17 Exhibit 11, please, and let's just go to the whole</p> <p>18 body of it, please.</p> <p>19 Do you see the start of the letter,</p> <p>20 Mr. Íñiguez, says "We represent</p> <p>21 Swarm Technology™, LLC and its principal, Alfonso</p> <p>22 Íñiguez, in connection with intellectual property</p>	<p>1 legal advantage."</p> <p>2 Do you see that, sir?</p> <p>3 A Yes, I see it.</p> <p>4 Q And so you'd agree that Swarm's</p> <p>5 portfolio would need to be licensed to the partner</p> <p>6 for them to achieve these advantages, right?</p> <p>7 MR. KELLY: Objection, form.</p> <p>8 THE WITNESS: I mentioned before, we</p> <p>9 presented an opportunity to license those patents.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q Okay. And this letter in 2014 was</p> <p>12 presenting that opportunity to license Swarm's</p> <p>13 patents, right?</p> <p>14 MR. KELLY: Objection to form.</p> <p>15 THE WITNESS: Mr. Sigler, I am not an</p> <p>16 attorney. I cannot make a legal conclusion by</p> <p>17 looking into that letter.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Well, was this letter offering an</p> <p>20 opportunity to license Swarm's patent portfolio,</p> <p>21 sir?</p> <p>22 MR. KELLY: I'll instruct the witness</p>
<p>1 matters"?</p> <p>2 A Yes.</p> <p>3 Q And in the second paragraph it</p> <p>4 describes some of Swarm's patent applications,</p> <p>5 right, sir?</p> <p>6 A That is correct.</p> <p>7 Q All right. And one of those</p> <p>8 applications is the -- ends in the numbers 332,</p> <p>9 right, sir?</p> <p>10 A Yes.</p> <p>11 Q And do you recognize that as the</p> <p>12 application that became the '004 patent, sir?</p> <p>13 A I would have to go back to the</p> <p>14 U.S. Patent Office files to verify that</p> <p>15 information.</p> <p>16 Q Okay. Let's go to the second</p> <p>17 paragraph from the bottom of the letter, and the</p> <p>18 last sentence of it says, "We believe Swarm's</p> <p>19 technology will play a pivotal role in the</p> <p>20 emerging IoT paradigm, and that Swarm's patent</p> <p>21 portfolio can provide Swarm's joint development</p> <p>22 partner with an unprecedented competitive and</p>	<p>1 that if you need a moment to review the text of</p> <p>2 the letter, you're welcome to do that.</p> <p>3 THE WITNESS: Okay, I need a moment to</p> <p>4 review.</p> <p>5 MR. SIGLER: Sure.</p> <p>6 THE WITNESS: The letter is saying</p> <p>7 that Swarm is posing a joint development, to be a</p> <p>8 joint development partner, and again --</p> <p>9 BY MR. SIGLER:</p> <p>10 Q Go ahead, sir. I'm sorry.</p> <p>11 A It's an opportunity to co-develop.</p> <p>12 Q And the part that I was just reading</p> <p>13 that refers to providing the partner with an</p> <p>14 unprecedeted competitive and legal advantage,</p> <p>15 what did Swarm mean by "legal advantage"?</p> <p>16 MR. KELLY: You can read the entire</p> <p>17 contents of the letter, if you'd like to do that,</p> <p>18 before you answer questions regarding the content</p> <p>19 of that letter.</p> <p>20 THE WITNESS: Mm-hmm.</p> <p>21 MR. SIGLER: Mr. Kelly, I'm going to</p> <p>22 caution you again to stop with the speaking</p>
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<p>1       objections and commentary. If you have an 2       objection, make it.</p> <p>3       If Mr. Íñiguez would like to read part 4       of the letter to refresh his memory or help him 5       answer, he can identify that for me.</p> <p>6       Again, what you're doing is directly 7       contrary to Judge Donato's order on discovery in 8       civil cases.</p> <p>9       So Mr. Íñiguez, I'm going to ask my 10      question again.</p> <p>11      What is the legal advantage to the 12      joint development partner that Swarm is offering 13      here?</p> <p>14      MR. KELLY: Objection to form.</p> <p>15      THE WITNESS: Again, Mr. Sigler, I 16      cannot speculate. I cannot make a legal judgment 17      because I am not an attorney.</p> <p>18      BY MR. SIGLER:</p> <p>19      Q    Okay. You'd agree, however, that this 20      letter that was sent in 2014 references Swarm's 21      patent applications, right, sir?</p> <p>22      A    Yes.</p>	<p>1       materials that this letter is referring to besides 2       those videos?</p> <p>3       A    The collateral material is basically 4       the explanation of this new architecture, and 5       this --</p> <p>6       Q    And did those collateral -- go ahead, 7       sir.</p> <p>8       A    Yeah. And this is -- this is now 9       provided on my website. I have a tab on my 10      website that says something along the lines of 11      academy, and that provides the videos that explain 12      how this architecture works.</p> <p>13      Q    Okay. Mr. Fahnert, you can take this 14      document off the screen, please, and let's put up 15      Tab ZZ, please, as Exhibit 13.</p> <p>16      (Íñiguez Exhibit 13 was marked 17      for identification.)</p> <p>18      BY MR. SIGLER:</p> <p>19      Q    All right, Mr. Íñiguez, do you see 20      that this is a letter dated May 12, 2001 [sic]?</p> <p>21      A    Yes, I see it. 22      Could you please zoom in?</p>
<p style="text-align: center;">Page 58</p> <p>1       Q    All right. And the final paragraph of 2       the letter says, "We would be happy to provide 3       collateral materials, including didactic video 4       tools, to assist your investigation and analysis, 5       at your request."</p> <p>6       Do you see that, sir?</p> <p>7       A    That is correct.</p> <p>8       Q    What is this letter referring to when 9       it says "collateral materials"?</p> <p>10      MR. KELLY: Objection, form.</p> <p>11      THE WITNESS: Yes, I provided -- well, 12      I shouldn't say "provided." I designed or 13      developed -- that's the word. I developed a set 14      of didactic videos that explain this new paradigm 15      in this computer architecture.</p> <p>16      They're required, because what I did, 17      I invented a new paradigm in computing, and I 18      needed to explain to other companies how this 19      worked. For this purpose, I made those didactic 20      videos.</p> <p>21      BY MR. SIGLER:</p> <p>22      Q    Okay. Were there other collateral</p>	<p style="text-align: center;">Page 60</p> <p>1       Q    Sure. Mr. Fahnert, can you do that, 2       please? All right. 3       And it's addressed to me and some of 4       my colleagues, right, sir?</p> <p>5       A    Yes, I can see that.</p> <p>6       Q    All right. And if we could go to -- 7       Mr. Fahnert, if you could take us through the last 8       page, please.</p> <p>9       All right, Mr. Íñiguez, do you see 10      that this letter is signed by a Mr. Elvis 11      Sulejmani? Do you see that on the screen, sir?</p> <p>12      A    Yes, I can see it.</p> <p>13      Q    And he's a paralegal at Beus Gilbert, 14      Swarm's counsel in this matter, right, sir?</p> <p>15      A    Correct.</p> <p>16      Q    All right. Mr. Fahnert, can you take 17      us to page 2 of the letter, please?</p> <p>18      Do you see there's a list here on 19      page 2 at the bottom, sir?</p> <p>20      A    Yes, I see it.</p> <p>21      Q    All right. And that list actually 22      continues on over into page 3. And Mr. Fahnert,</p>

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<p style="text-align: right;">Page 61</p> <p>1 could you also put that on the screen?      2 All right, do you see that list of 23      3 companies on the screen, Mr. Íñiguez?      4 A Yes, I see it.      5 Q And are these the companies that Swarm      6 sent that template -- strike that.      7 Are these the companies that Swarm      8 sent a letter to in 2014 that matches the      9 templates we just saw?      10 A That is -- that is the proposed list,      11 but I must -- I must say that I don't believe that      12 we sent letters to Free [sic]. So that was the      13 initial proposal, and at the end, I don't know --      14 I don't recall the exact companies that we      15 selected, but sure, I know that we did not send to      16 Freescale.      17 Q Okay. Other than Freescale, did Swarm      18 send letters in 2014 using the template we just      19 saw? Strike that.      20 Aside from Freescale, did Swarm send a      21 letter to each of the companies on this list      22 matching the template we just saw?</p>	<p style="text-align: right;">Page 63</p> <p>1 Q Okay. And are you aware, sir, that      2 those companies I just mentioned are based in      3 California?      4 A Yes.      5 Q All right. So Swarm sent letters to      6 each of those companies in 2014 in California,      7 right, sir?      8 MR. KELLY: Objection to form.      9 THE WITNESS: We were not targeting      10 the State of California. Those companies are      11 located throughout the world, and some happen to      12 be located in California, but that was not our      13 target.      14 BY MR. SIGLER:      15 Q Yeah, that wasn't my question, sir.      16 My question was did Swarm send letters      17 to those companies that I referenced -- Google,      18 Nest, Apple, Cisco, Intel, Oracle, Qualcomm, HP,      19 Atmel, and NVIDIA -- in 2014 in California?      20 MR. KELLY: Objection to form.      21 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 62</p> <p>1 A I would say to some. Again, National      2 Instruments, I don't believe we sent one to      3 National Instruments.      4 Q Did Swarm send a letter using the      5 template we just saw to Google in 2014?      6 A Yes.      7 Q Did Swarm send a similar letter to      8 Nest in 2014?      9 A Yes.      10 Q Did Swarm send a similar letter to      11 Apple in 2014?      12 A Yes.      13 Q Did Swarm send a letter matching the      14 template to Cisco in 2014?      15 A Yes.      16 Q All right. Did Swarm also send      17 letters matching the template we just saw in 2014      18 to Intel, Oracle, Qualcomm, HP, AMD, Atmel, and      19 NVIDIA?      20 A From the companies that you mentioned,      21 I am not sure about AMD. The rest, the answer is      22 yes.</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MR. SIGLER:      2 Q Thank you, sir.      3 Has Swarm ever told any company that      4 it requires a license to Swarm's patents?      5 A Okay, can you please repeat that      6 question? Because the AC just turned on here, and      7 I have a problem hearing.      8 Q No problem. No problem.      9 Had Swarm ever told any company that      10 it requires a license to Swarm's patents?      11 A We never -- we never asked any      12 company. We never made any demands asking that      13 they require a license.      14 Q Okay, but has Swarm ever said to a      15 company that it requires a license to Swarm's      16 patents?      17 A We did -- we offer the opportunity,      18 but we did not make any demands.      19 Q Okay. So Swarm never told any      20 company that it required a license to Swarm's      21 patents?      22 MR. KELLY: Object to the form.</p>

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<p>1      Object to the form.</p> <p>2           THE WITNESS: Again, when we -- when 3      we sent those letters, we said that this is not an 4      accusation of infringement. We just invited the 5      opportunity to see this opportunity to license. 6      That was it.</p> <p>7           BY MR. SIGLER:</p> <p>8           Q Well, if a company required a license 9      to Swarm's patents, that would mean that that 10     company was infringing Swarm's patents, right, 11     sir?</p> <p>12          MR. KELLY: Objection, form.</p> <p>13          THE WITNESS: Are you asking if I said 14     to a company that they are required? Can you --</p> <p>15          BY MR. SIGLER:</p> <p>16          Q Well, it sounds like from your 17     testimony that Swarm never said to a company that 18     you require a license to my patents, right?</p> <p>19          A To the best that I know, based on the 20     documentation that I have provided and seen and 21     have, I never demanded the requirement of a 22     license.</p>	<p>1      answer that question to the extent it would 2      require him to divulge attorney-client privileged 3      information.</p> <p>4           THE WITNESS: Again, I am not an 5      attorney. You're asking me to make a legal 6      judgment, and I cannot do the -- I am not -- I'm 7      not an attorney.</p> <p>8           BY MR. SIGLER:</p> <p>9           Q Okay, so -- okay, let me move on.</p> <p>10          Swarm also sent letters to Juniper, 11     Cisco, Arista, HP, and Apstra about Swarm's 12     patents, right, sir?</p> <p>13          A Yes, but can you repeat that list --</p> <p>14          Q Sure.</p> <p>15          A -- of names?</p> <p>16          Q Well, let's go one by one.</p> <p>17          Swarm also sent letters to Juniper 18     about Swarm's patents, right?</p> <p>19          MR. KELLY: Objet to the form.</p> <p>20          THE WITNESS: Right.</p> <p>21          BY MR. SIGLER:</p> <p>22          Q And Swarm also sent letters to Cisco</p>
<p>1           Q Because if Swarm -- oh, I'm sorry, 2      sir, go ahead.</p> <p>3           A Again, we just -- this is very clear 4      in every letter. We presented an opportunity for 5      the license, but an opportunity is not a 6      requirement.</p> <p>7           Q Right. And so if Swarm said to a 8      company we think you're required to take a license 9      to our patents, that would mean that Swarm thought 10     that company was infringing Swarm's patents, 11     right?</p> <p>12          MR. KELLY: Objection to the form of 13     the question.</p> <p>14          BY MR. SIGLER:</p> <p>15          Q I can ask the question again.</p> <p>16          Mr. Íñiguez, you'd agree with me that 17     if Swarm told a company that it requires a license 18     to Swarm's patents, that would mean that Swarm 19     believed that company was infringing Swarm's 20     patents, right?</p> <p>21          MR. KELLY: Objet to the form of the 22     question, and also instruct the witness not to</p>	<p>1      about licensing Swarm's patents, right?</p> <p>2          A Correct.</p> <p>3          Q And Swarm also sent letters to Arista 4      about licensing Swarm's patents, right?</p> <p>5          MR. KELLY: Objet to the form.</p> <p>6          THE WITNESS: Correct.</p> <p>7          BY MR. SIGLER:</p> <p>8          Q And Swarm also sent letters to HPE 9      offering the opportunity to license Swarm's 10     patents, right?</p> <p>11          MR. KELLY: Same objection.</p> <p>12          THE WITNESS: Correct.</p> <p>13          BY MR. SIGLER:</p> <p>14          Q And Swarm also sent letters to Apstra 15     offering them the opportunity to license Swarm's 16     patents, right?</p> <p>17          A Correct.</p> <p>18          Q And those companies are all based in 19     California, right, sir?</p> <p>20          MR. KELLY: Objection, form.</p> <p>21          THE WITNESS: Yes, they are.</p>

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<p>1 BY MR. SIGLER:</p> <p>2 Q And beyond this group of companies we 3 talked about so far today, has Swarm contacted any 4 other companies in California about licensing 5 Swarm's patents?</p> <p>6 A Those are only -- the only companies 7 in California.</p> <p>8 Q Okay. Would you like to take a break, 9 Mr. Íñiguez? I can keep going, or we can take a 10 break. It's up to you. I'm at a stopping point.</p> <p>11 A Yes, let's take a break.</p> <p>12 MR. SIGLER: Okay.</p> <p>13 THE VIDEOGRAPHER: Okay.</p> <p>14 MR. KELLY: Off the record.</p> <p>15 THE VIDEOGRAPHER: We are going off 16 the record. The time is 10:15.</p> <p>17 (A break was taken.)</p> <p>18 THE VIDEOGRAPHER: We are back on the 19 record. The time is 10:36.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Welcome back, Mr. Íñiguez.</p> <p>22 A Thank you.</p>	<p>1 (Iniguez Exhibit 14 was marked 2 for identification.)</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Mr. Íñiguez, do you have Exhibit 14 5 on the screen here, sir?</p> <p>6 A Can you make that bigger? 7 Okay, I can see it now, yes.</p> <p>8 Q Okay. Do you see that this is a 9 Notice of Deposition to Swarm Technology, sir?</p> <p>10 A Yes, I can see it.</p> <p>11 Q And have you seen this deposition 12 notice to Swarm before?</p> <p>13 A Yes, I have.</p> <p>14 Q And did you review it in preparing for 15 your deposition today?</p> <p>16 A Yes, I did.</p> <p>17 Q Okay. And you're appearing here today 18 in response to this deposition notice on behalf of 19 Swarm, right, sir?</p> <p>20 A Yes.</p> <p>21 Q All right. And you're prepared to 22 testify on the topics in this notice here today on</p>
<p style="text-align: center;">Page 70</p> <p>1 Q Did you speak to your lawyers during 2 the break?</p> <p>3 A We have a -- we had a conversation.</p> <p>4 Q Did you talk at all about the 5 substance of your testimony here today?</p> <p>6 A We talk about speaking -- telling the 7 truth, which I have been doing, by the way.</p> <p>8 Q Did you talk about anything else 9 regarding your testimony today?</p> <p>10 A Anything about -- can you be more 11 specific about what you're asking?</p> <p>12 Q Did you talk about any of your -- the 13 answers that you've given today to my questions?</p> <p>14 A As far as -- as far as giving moral 15 support, yes.</p> <p>16 Q All right, understood.</p> <p>17 Mr. Fahner, can you please mark -- 18 pull up the next exhibit? It will be Tab L.</p> <p>19 THE REPORTER: Are we marking that as 20 Exhibit 14?</p> <p>21 MR. SIGLER: Yes, please. I was going 22 to ask.</p>	<p style="text-align: center;">Page 72</p> <p>1 behalf of Swarm?</p> <p>2 A Yes, I am prepared.</p> <p>3 Q Okay. All right, you can take that 4 down, Mr. Fahner.</p> <p>5 Mr. Íñiguez, have you ever had your 6 deposition taken before?</p> <p>7 A A deposition before?</p> <p>8 Q Yes.</p> <p>9 A No, my first time.</p> <p>10 Q Okay. Have you ever testified in 11 court before?</p> <p>12 A Well, one time my -- my sister went 13 through a divorce, and my former brother-in-law, 14 for some reason, asked me to go in as a witness, 15 and I went there as a witness. And he represented 16 himself; that was an interesting scenario.</p> <p>17 That was my only time in court.</p> <p>18 Q Okay. Did you do anything to prepare 19 for the deposition today?</p> <p>20 A Well, I prepared by providing all the 21 documentation that I was asked to produce, and I 22 read the document so that I'm aware of the topics</p>

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<p>1 that we're going to discuss today.</p> <p>2 Q And did you meet with your attorneys</p> <p>3 in preparing for the deposition today?</p> <p>4 A I have met with my attorneys multiple</p> <p>5 times throughout this lawsuit.</p> <p>6 Q Did you meet with them specifically to</p> <p>7 prepare for this deposition?</p> <p>8 MR. KELLY: I'll instruct the witness</p> <p>9 not to answer to the extent that doing so would</p> <p>10 require invading the attorney-client privilege.</p> <p>11 THE WITNESS: Since I was not aware</p> <p>12 what a deposition, the only time I came across</p> <p>13 that concept was when I saw it possibly on a</p> <p>14 movie, and I needed to know what this is all</p> <p>15 about, and they instructed -- they told me how</p> <p>16 this works. That was my first one.</p> <p>17 BY MR. SIGLER:</p> <p>18 Q And it's just -- I'm just looking for</p> <p>19 a yes or no. I'm not asking about what you talked</p> <p>20 about, but did you meet with your attorneys to</p> <p>21 prepare for the deposition today?</p> <p>22 A Yes.</p>	<p>1 many -- how much time precisely, or --</p> <p>2 BY MR. SIGLER:</p> <p>3 Q Ballpark. How many -- how long did</p> <p>4 you meet with your attorneys on Wednesday?</p> <p>5 A Well, I have to say that we discussed</p> <p>6 multiple topics related to the --</p> <p>7 MR. KELLY: I'll instruct the witness</p> <p>8 not to answer to the extent doing so will require</p> <p>9 you to disclose the substance of attorney-client</p> <p>10 privileged information.</p> <p>11 THE WITNESS: Yes, that was</p> <p>12 attorney-client privileged information.</p> <p>13 BY MR. SIGLER:</p> <p>14 Q All right. How long did you meet with</p> <p>15 them to prepare for this deposition specifically?</p> <p>16 MR. KELLY: Objection to form.</p> <p>17 THE WITNESS: Ballpark number, I would</p> <p>18 say a couple of hours each day.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q Okay. And -- go ahead, sir,</p> <p>21 I'm sorry. Were you going to add to that?</p> <p>22 A Yeah. And we -- we went through the</p>
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<p>1 Q All right. When did you meet with</p> <p>2 them?</p> <p>3 A I met with them -- you're asking for a</p> <p>4 specific date --</p> <p>5 Q Yes.</p> <p>6 A -- or just in general?</p> <p>7 I met them more than once this week.</p> <p>8 Q Okay. What days this week?</p> <p>9 MR. KELLY: Objection, form.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q What days did you meet with them this</p> <p>12 week, sir?</p> <p>13 A I'm thinking. I'm thinking.</p> <p>14 Q Okay.</p> <p>15 A If today is Friday, then it would have</p> <p>16 been Wednesday, and then Thursday.</p> <p>17 Q How long did you meet with them on</p> <p>18 Monday?</p> <p>19 A How much time we --</p> <p>20 MR. KELLY: Object to the form of that</p> <p>21 question.</p> <p>22 THE WITNESS: Are you asking for how</p>	<p>1 documentation that we produced, and I basically --</p> <p>2 throughout this preparation, I was providing them</p> <p>3 with all the documentation that you have</p> <p>4 requested.</p> <p>5 Q Did you go through all the documents</p> <p>6 that Swarm produced with your attorneys?</p> <p>7 MR. KELLY: Objection to form.</p> <p>8 THE WITNESS: Those are 1,300 pages</p> <p>9 that we produced, and I am familiarized with all</p> <p>10 the documentation, but I cannot quote you on every</p> <p>11 single line that each document contains.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Sure, and I understand that, sir.</p> <p>14 Aside from your attorneys, did you</p> <p>15 speak with anyone else to prepare for the</p> <p>16 deposition today?</p> <p>17 A No.</p> <p>18 Q Do you know a gentleman named</p> <p>19 John Fisher?</p> <p>20 A Yes.</p> <p>21 Q Who's Mr. Fisher?</p> <p>22 A Mr. Fisher is a patent</p>

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<p>1 representative. In the letters, his name is --      2 basically he's representing Swarm in order to seek      3 this opportunity to consider licensing with those      4 companies in California. So that was his role.</p> <p>5 Q Did you speak with Mr. Fisher in      6 preparing for the deposition today?</p> <p>7 A No, I did not.</p> <p>8 Q Okay. Where is Swarm located, sir?</p> <p>9 A It is located in Mesa, Arizona.</p> <p>10 Q When was Swarm founded?</p> <p>11 A The precise date I don't have on the      12 top of my head, but when they filed for the LLC,      13 between 2013 or 2014. I would have to go back and      14 check the actual date.</p> <p>15 Q But you think it's in 2013 or 2014,      16 sir?</p> <p>17 A Around those years, yes.</p> <p>18 Q Okay. Does Swarm have any employees?</p> <p>19 A No.</p> <p>20 Q Does Swarm have officers?</p> <p>21 A Basically the company is owned by my      22 wife and myself, that's it.</p>	<p>1 product in the future?</p> <p>2 MR. KELLY: Object to the form.</p> <p>3 THE WITNESS: That is included in the      4 pitch deck, yes. The idea is to fabricate Swarm      5 intelligent works, fabricate those in Arizona, and      6 then sell them from Arizona.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q And where would you sell those      9 products? Well, strike that, bad question.</p> <p>10 You said you'd be selling those from      11 Arizona, right, sir?</p> <p>12 A That is -- that is the -- that is the      13 plan. This is the reason why, again, the business      14 plan is saying that we're asking for funding, so      15 that we can fabricate and produce those products.</p> <p>16 Q Okay. Will Swarm be offering to sell      17 those products to anyone in California?</p> <p>18 MR. KELLY: Object to form.</p> <p>19 THE WITNESS: Swarm will be offering      20 those products to any person in the world, not      21 specific to California.</p>
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<p>1 Q Okay. Is Swarm's only business --      2 strike that.</p> <p>3 Is Swarm's only current business      4 licensing its patents?</p> <p>5 MR. KELLY: Objection, form.</p> <p>6 THE WITNESS: No, and this is clearly      7 stated and explained in the business plan that you      8 have. The business plan goes extensively over the      9 development of robotics and how to apply Swarm      10 intelligence into robots, including drones and      11 rovers, and that is a big portion of the business.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Okay. Has Swarm ever sold any      14 products?</p> <p>15 A No.</p> <p>16 Q Has Swarm ever made any revenue?</p> <p>17 A As included -- as is stated in the      18 business plan, Swarm is a pre-revenue company.</p> <p>19 Q So Swarm hasn't realized any revenue      20 to this point?</p> <p>21 A Correct, there's no revenue.</p> <p>22 Q Okay. Does Swarm have plans to sell</p>	<p>1 BY MR. SIGLER:</p> <p>2 Q Okay. So anyone anywhere in the      3 United States, right?</p> <p>4 MR. KELLY: Object to form.</p> <p>5 THE WITNESS: And not only      6 United States. They could be located anywhere --      7 anywhere in the world.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Okay. And that would include      10 California, right, sir?</p> <p>11 A Yes.</p> <p>12 Q All right. Has Swarm ever licensed      13 any of its patents to anyone?</p> <p>14 A No. Swarm does not -- does not have      15 any licenses with anyone, inside California or      16 outside California, and that includes it has no      17 exclusive licenses, and no non-exclusive licenses.</p> <p>18 Q Have you ever traveled to California?</p> <p>19 A Yes, I have.</p> <p>20 Q Approximately how many times?</p> <p>21 A How often?</p> <p>22 Q I'm sorry, sir. I said about how many</p>

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<p>1 times have you traveled to California?</p> <p>2 MR. KELLY: Object to the form.</p> <p>3 THE WITNESS: Well, I have taken my</p> <p>4 kids to Disneyland a couple of times, SeaWorld.</p> <p>5 In the early 2000s, my wife and I made</p> <p>6 multiple trips to Los Angeles. We were working as</p> <p>7 the executive couple for the American counter, and</p> <p>8 we went there once a month.</p> <p>9 And then later on, I traveled to trade</p> <p>10 shows. To be more specific, three trade shows.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q Okay. Have you ever traveled to</p> <p>13 California on behalf of Swarm?</p> <p>14 A Only when I went to those three trade</p> <p>15 shows.</p> <p>16 Q Okay. And those three trade shows</p> <p>17 were all in Santa Clara, California, right, sir?</p> <p>18 A Correct.</p> <p>19 Q Has Swarm ever paid anyone to help</p> <p>20 with licensing its patents?</p> <p>21 A No. No, we never paid anybody to --</p> <p>22 are you asking about hiring somebody as an</p>	<p>1 privileged information.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q Well, did Mr. Fisher have a -- well,</p> <p>4 strike that.</p> <p>5 If Swarm obtained a patent license --</p> <p>6 or excuse me.</p> <p>7 If Swarm licensed its patents to</p> <p>8 another company through Mr. Fisher's efforts and</p> <p>9 Swarm was compensated, was Mr. Fisher entitled to</p> <p>10 a part of that compensation?</p> <p>11 MR. KELLY: Object to the form, and</p> <p>12 object to the extent it requires the witness to</p> <p>13 divulge the substance of attorney-client</p> <p>14 privileged communications.</p> <p>15 THE WITNESS: That is -- again, Swarm</p> <p>16 has never licensed any patents, and that includes</p> <p>17 the effort attempted by Mr. Fisher.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q What did -- well, strike that.</p> <p>20 I mean, I disagree that the nature of</p> <p>21 this relationship is in any way protected by the</p> <p>22 attorney-client privilege, and I'll note that on</p>
<p>1 employee? Can you repeat that question? I want</p> <p>2 to make sure that I got it correct.</p> <p>3 Q Has Swarm ever paid anyone to help its</p> <p>4 efforts to license its patents?</p> <p>5 MR. KELLY: Object to the form.</p> <p>6 THE WITNESS: No, we have not. We</p> <p>7 have never paid anybody.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Did Swarm pay Mr. Fisher for his</p> <p>10 services in helping to license Swarm's patents?</p> <p>11 MR. KELLY: Same objection.</p> <p>12 THE WITNESS: No, it did not.</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Okay. But Mr. Fisher did, at least</p> <p>15 for a time, represent Swarm; is that correct, sir?</p> <p>16 A Swarm -- Mr. Fisher dedicated time for</p> <p>17 this, but I did not -- or Swarm did not pay</p> <p>18 anything to Mr. Fisher.</p> <p>19 Q How was he compensated for his time</p> <p>20 during that work for Swarm?</p> <p>21 MR. SIGLER: Object to the form.</p> <p>22 THE WITNESS: That is attorney-client</p>	<p>1 the record.</p> <p>2 How was Swarm compensating Mr. Fisher</p> <p>3 for his time sending correspondence to potential</p> <p>4 licensees?</p> <p>5 MR. KELLY: Same objection.</p> <p>6 THE WITNESS: Same response. It is</p> <p>7 attorney-client privileged information.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Did Mr. Fisher have any interest in --</p> <p>10 well, strike that.</p> <p>11 Was Mr. Fisher entitled -- well, I</p> <p>12 already asked that, so strike that. All right.</p> <p>13 Well, I'm just going to disagree on</p> <p>14 the record about this, and we can talk about it</p> <p>15 later and I'll reserve my rights, but if</p> <p>16 Mr. Fisher had any kind of stake or incentive to</p> <p>17 get these patents licensed, including to entities</p> <p>18 in California, I don't think that's protected by</p> <p>19 the attorney-client privilege.</p> <p>20 MR. KELLY: Noted.</p> <p>21 MR. SIGLER: So we can talk about that</p> <p>22 later.</p>

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<p>1           BY MR. SIGLER:</p> <p>2       Q Does Swarm have any investors right</p> <p>3       now?</p> <p>4       A Swarm does not have any investors. It</p> <p>5       was -- it is -- it was our hope to find an</p> <p>6       investor, and at this point, Swarm is a</p> <p>7       self-funded company. The only owners in Swarm are</p> <p>8       my wife and myself.</p> <p>9       Q Has Swarm ever had any investors</p> <p>10      besides you and your wife?</p> <p>11      MR. KELLY: Objection.</p> <p>12      THE WITNESS: There are no -- there</p> <p>13      are no investors in Swarm.</p> <p>14      As indicated in my business plan, we</p> <p>15      have family members that are contributing to</p> <p>16      helping Swarm, but they are not investors in</p> <p>17      Swarm.</p> <p>18      BY MR. SIGLER:</p> <p>19      Q Has anyone ever questioned the</p> <p>20      validity of Swarm's patents?</p> <p>21      MR. KELLY: Objection, form.</p> <p>22      THE WITNESS: Has anybody questioned</p>	<p>1           that.</p> <p>2       BY MR. SIGLER:</p> <p>3       Q Okay. Mr. -- well, strike that.</p> <p>4       Mr. Íñiguez, Swarm had some</p> <p>5       communications with Juniper before this lawsuit,</p> <p>6       right?</p> <p>7       A Correct.</p> <p>8       Q Mr. Fahnert, can you please put Tab VV</p> <p>9       on the screen, and I believe that should be</p> <p>10      Exhibit 15.</p> <p>11      (Iniguez Exhibit 15 was marked</p> <p>12      for identification.)</p> <p>13      BY MR. SIGLER:</p> <p>14      Q Do you see Exhibit 15 on your screen,</p> <p>15      Mr. Íñiguez?</p> <p>16      A Yes, I can see it.</p> <p>17      Q All right. Do you see that it's a</p> <p>18      July 16, 2018, letter, sir?</p> <p>19      A Yes.</p> <p>20      Q And it's addressed to Bikash Koley,</p> <p>21      the CTO of Juniper Networks in Sunnyvale,</p> <p>22      California, right, sir?</p>
<p>1           the validity? You mean going to the patent office</p> <p>2       and filing paperwork for that purpose?</p> <p>3       BY MR. SIGLER:</p> <p>4       Q Has anyone ever sent Swarm a letter,</p> <p>5       for example, stating that they don't believe</p> <p>6       Swarm's patents are valid?</p> <p>7       MR. KELLY: Object to the form.</p> <p>8       THE WITNESS: I want to make sure that</p> <p>9       I understood the question.</p> <p>10      Are you talking about a</p> <p>11      company providing some type of documentation</p> <p>12      showing those patents are invalid?</p> <p>13      BY MR. SIGLER:</p> <p>14      Q It's broader than that.</p> <p>15      Has any company ever said to Swarm or</p> <p>16      its representatives we don't think your patents</p> <p>17      are valid?</p> <p>18      MR. KELLY: Object to form.</p> <p>19      THE WITNESS: To the best of my</p> <p>20      recollection, I don't believe they have.</p> <p>21      I would have to see the document in</p> <p>22      front of me in order to be able to comment on</p>	<p>1           A Correct.</p> <p>2       Q And this is another letter from your</p> <p>3       attorney, Mr. Kelly, right, sir?</p> <p>4       A Correct.</p> <p>5       Q And like the other letters on this</p> <p>6       same date that we looked at earlier today, this</p> <p>7       one also highlights a licensing opportunity,</p> <p>8       right, sir?</p> <p>9       A Correct.</p> <p>10      Q All right. And if we could go to the</p> <p>11      second page, please, Mr. Fahnert.</p> <p>12      Do you see, sir, that this letter,</p> <p>13      like the other ones we looked at previously,</p> <p>14      states that Swarm would welcome the opportunity to</p> <p>15      discuss exclusive or non-exclusive patent</p> <p>16      licensing arrangements with you?</p> <p>17      A Correct.</p> <p>18      Q All right. So Swarm was -- well,</p> <p>19      strike that.</p> <p>20      Do you know if Swarm ever got a</p> <p>21      response to this letter from Juniper?</p> <p>22      A There is a -- yes, there's a response</p>

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<p>1 from Juniper.</p> <p>2 Q In fact, sir, Swarm continued to send</p> <p>3 Juniper letters until May 2020, right?</p> <p>4 A I don't remember the exact dates, but</p> <p>5 yes, we continued to correspond.</p> <p>6 Q Okay. And in the production and the</p> <p>7 other materials that I have, I found 11 letters or</p> <p>8 emails that Swarm sent to Juniper between 2018 and</p> <p>9 2020 about licensing Swarm's patents.</p> <p>10 Does that sound about right to you?</p> <p>11 MR. KELLY: Object to form.</p> <p>12 THE WITNESS: Can you please show me</p> <p>13 that email?</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Well, we're on limited time here, so I</p> <p>16 just wanted to see if that sounded right to you.</p> <p>17 I also found five letters or emails</p> <p>18 from Juniper to Swarm during that time. Does that</p> <p>19 sound about right to you?</p> <p>20 MR. KELLY: Object to the form.</p> <p>21 THE WITNESS: We corresponded through</p> <p>22 email. I don't remember the exact number of</p>	<p>1 then that was precisely what we're asking. We</p> <p>2 wanted to have a communication on that topic, and</p> <p>3 that was it.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Well, Juniper responded by telling you</p> <p>6 they weren't interested in the license, right,</p> <p>7 sir?</p> <p>8 MR. KELLY: Object to the form.</p> <p>9 THE WITNESS: I would have to see the</p> <p>10 letter that you're referring to in order to make a</p> <p>11 comment.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q All right, we'll get to that.</p> <p>14 Swarm sent Juniper some charts mapping</p> <p>15 Swarm's patent claims to Juniper's products,</p> <p>16 right?</p> <p>17 A Basically -- are you referring to the</p> <p>18 claim chart when you say "mapping"?</p> <p>19 Can you repeat the question?</p> <p>20 Q Sure. Did Swarm send Juniper claim</p> <p>21 charts?</p> <p>22 A Correct.</p>
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<p>1 letters or emails, but those emails are in your</p> <p>2 possession at this point.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q All right. And are you aware that</p> <p>5 Mr. Fisher had a call with someone from Juniper at</p> <p>6 one point, sir?</p> <p>7 A I believe so.</p> <p>8 Q Were you on that call?</p> <p>9 A I was not.</p> <p>10 Q Did Mr. Fisher tell you about what</p> <p>11 happened on that call?</p> <p>12 A We had multiple conversations -- I had</p> <p>13 multiple conversations with Mr. Fisher, but I</p> <p>14 don't remember every detail of those</p> <p>15 conversations.</p> <p>16 Q Why did Swarm continue to send letters</p> <p>17 to Juniper for almost two years?</p> <p>18 MR. KELLY: Object to the form.</p> <p>19 THE WITNESS: Why? Because as stated</p> <p>20 in the initial letter, the initial letter says</p> <p>21 this is an opportunity for a possible patent or</p> <p>22 licensing opportunity. Juniper responded, and</p>	<p>1 Q Why did Swarm send those claim charts</p> <p>2 to Juniper?</p> <p>3 MR. KELLY: Object to form.</p> <p>4 THE WITNESS: The claim chart showed a</p> <p>5 mapping between the claims included -- in this</p> <p>6 case, one claim included in the patent -- and the</p> <p>7 mapping of the product. That's the purpose of the</p> <p>8 claim chart; it's a mapping.</p> <p>9 BY MR. SIGLER:</p> <p>10 Q All right. Did Swarm believe that</p> <p>11 Juniper infringes Swarm's patents?</p> <p>12 MR. KELLY: Objection to the form of</p> <p>13 the question.</p> <p>14 THE WITNESS: Again, as indicated in</p> <p>15 the cover letter that included that claim chart,</p> <p>16 the cover letter said that this is an opportunity,</p> <p>17 licensing opportunity, and then we provided the</p> <p>18 claim chart.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q And did Swarm believe that Juniper's</p> <p>21 products infringed Swarm's patents?</p> <p>22 MR. KELLY: Object to the form.</p>

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<p>1        THE WITNESS: Again, we're -- we're 2        presenting Juniper an opportunity, and the claim 3        chart shows this -- this opportunity showing a 4        mapping between the claims and a product. That's 5        all it is, is to show that there's a mapping.</p> <p>6        BY MR. SIGLER:</p> <p>7        Q It's to show that the elements of the 8        claim are the same as what you see in the Juniper 9        products, right, sir?</p> <p>10      MR. KELLY: Object to form.</p> <p>11      THE WITNESS: It basically shows 12     that -- again, the patent describes an invention 13     claim, and then we're showing the mapping with the 14     product that in this case Juniper has.</p> <p>15      BY MR. SIGLER:</p> <p>16      Q And Swarm has filed a lawsuit against 17     Amazon in Arizona, right, sir?</p> <p>18      A That is correct.</p> <p>19      Q And in preparation for that lawsuit, 20     did Swarm create claim charts mapping Amazon's 21     products to Swarm's patent claims?</p> <p>22      MR. KELLY: Object to the form.</p>	<p>1        MR. KELLY: Object to form.</p> <p>2        THE WITNESS: I am -- I created the 3        initial draft of the claim chart. Again, I am not 4        an attorney. I provide the initial information, 5        and I get help from my attorney using 6        attorney-client privilege, and then produce the 7        document.</p> <p>8        BY MR. SIGLER:</p> <p>9        Q And Swarm also sent Juniper a draft 10      license agreement under which Juniper would 11      license Swarm's patents, right?</p> <p>12      A At one point, we sent a draft license 13      agreement.</p> <p>14      Q Has Swarm ever sent a draft license 15      agreement to anyone else?</p> <p>16      MR. KELLY: Object to form.</p> <p>17      THE WITNESS: Swarm does not have 18     any -- for the record, does not have any executed 19     license agreements -- excuse me (witness clearing 20     throat) -- does not have any executed license 21     agreements.</p> <p>22      We sent -- provided the documentations</p>
<p>1        THE WITNESS: It is important not to 2        take a document out of context.</p> <p>3        In the case of the claim chart that I 4        provided to Juniper, I'm showing a mapping of the 5        product, and that claim chart includes a cover 6        letter saying that this is not an accusation of 7        infringement. It is basically just presenting an 8        opportunity.</p> <p>9        In the case, as you mentioned, of AWS, 10      the claim chart has a different context.</p> <p>11      BY MR. SIGLER:</p> <p>12      Q And that wasn't my question, sir. My 13      question was a far more simple and narrow one.</p> <p>14      Did Swarm create claim charts mapping 15      Amazon's products to Swarm's patent claims in 16      preparing for filing its Complaint against Amazon?</p> <p>17      A I don't have the exact document in 18      front of me of that AWS Complaint, but that is 19      public record. If you show me the document, then 20      I should be able to explain it to you.</p> <p>21      Q Did you create the claim charts that 22      were sent to Juniper?</p>	<p>1        that we produced. We have a draft license 2        agreement that we sent to Phi Robotics, and that 3        was never executed. That's a company located in 4        Mumbai, India.</p> <p>5        BY MR. SIGLER:</p> <p>6        Q Okay. Other than Juniper and 7        Phi Robotics, has Swarm ever sent a draft license 8        agreement to anyone else?</p> <p>9        MR. KELLY: Object to the form.</p> <p>10      THE WITNESS: Those are the only 11      license agreements that we have ever sent.</p> <p>12      BY MR. SIGLER:</p> <p>13      Q Okay. So the only license -- the only 14      draft license agreement that you ever sent to 15      anyone in the United States went to Juniper in 16      California, right, sir?</p> <p>17      A Yes.</p> <p>18      MR. KELLY: Object to the form.</p> <p>19      THE WITNESS: That is correct.</p> <p>20      BY MR. SIGLER:</p> <p>21      Q Mr. Fahnert, can you please put Tab O 22      on the screen? First, let's identify this as</p>

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<p>1      Exhibit 16 for the record, please.</p> <p>2            (Iniguez Exhibit 16 was marked</p> <p>3            for identification.)</p> <p>4            BY MR. SIGLER:</p> <p>5      Q Mr. Íñiguez, have you seen this email</p> <p>6      before?</p> <p>7      A Yes, I have.</p> <p>8      Q It's an email from your</p> <p>9      representative, Mr. Fisher, right?</p> <p>10     A Correct.</p> <p>11     Q And it's to Dave Saunders at Juniper,</p> <p>12     right?</p> <p>13     A Correct.</p> <p>14     Q And it's also addressed to you, right?</p> <p>15     A Correct.</p> <p>16     Q And this is the email where Swarm</p> <p>17     attaches the draft licensing agreement that it</p> <p>18     sent to Juniper, right?</p> <p>19     A Right. Can you scroll down to the</p> <p>20     bottom where -- so that I can see better?</p> <p>21     Q Sure.</p> <p>22     A Okay. Is there another -- there's</p>	<p>1      Agreement?</p> <p>2            MR. KELLY: Object to form.</p> <p>3            THE WITNESS: Can you scroll -- can</p> <p>4            you zoom in a little bit?</p> <p>5            This document was provided by my</p> <p>6            attorney.</p> <p>7            BY MR. SIGLER:</p> <p>8      Q Which attorney?</p> <p>9      A Michael Kelly.</p> <p>10     Q Okay. And then Mr. Fisher provided it</p> <p>11     to Juniper, right?</p> <p>12     MR. KELLY: Object to form.</p> <p>13     THE WITNESS: Correct.</p> <p>14     BY MR. SIGLER:</p> <p>15     Q All right, we can take that off the</p> <p>16     screen.</p> <p>17     Let's put up Tab WW, please, which</p> <p>18     will be Exhibit 17.</p> <p>19     (Iniguez Exhibit 17 was marked</p> <p>20     for identification.)</p> <p>21     BY MR. SIGLER:</p> <p>22     Q Mr. Íñiguez, do you see that this is</p>
<p>1      another page to this email, correct?</p> <p>2      Q Yes. And I'm only going to ask you</p> <p>3      about a couple of pages of these. For now, on the</p> <p>4      first page, there's a heading that says "Answer:"</p> <p>5      if we could focus on that.</p> <p>6            And do you see, sir, that it says,</p> <p>7            "Answer: In the interest of simplification, the</p> <p>8            claim chart originally provided"?</p> <p>9            Do you see that?</p> <p>10     A Yes, I can see that.</p> <p>11     Q Okay. So this is referring to a claim</p> <p>12     chart that was previously sent by Swarm to</p> <p>13     Juniper, right?</p> <p>14     A Correct.</p> <p>15     Q All right. If we could go to the</p> <p>16     attached license agreement, which is at, I believe</p> <p>17     it's the fifth page of this document. The Bates</p> <p>18     number ends in 282.</p> <p>19            Do you see that on your screen,</p> <p>20            Mr. Íñiguez?</p> <p>21     A Yes, I see it.</p> <p>22     Q All right. Who drafted this License</p>	<p>1      another email from Mr. Fisher?</p> <p>2      A Yes, I see it.</p> <p>3      Q And it's dated November 6, 2019,</p> <p>4      right?</p> <p>5      A Yes.</p> <p>6      Q And it's to Mr. Saunders at Juniper,</p> <p>7      right?</p> <p>8      A Correct.</p> <p>9      Q And you are copied on this email,</p> <p>10     right?</p> <p>11     A Yes.</p> <p>12     Q All right. And if we could go --</p> <p>13     well, you see it there on the screen actually</p> <p>14     already. You can put that back up, Mr. Fahnert.</p> <p>15     I'm sorry.</p> <p>16            Mr. Fisher opens his email by saying,</p> <p>17            "Dear Mr. Saunders, I was surprised and</p> <p>18            disappointed by your email of October 24 saying</p> <p>19            Juniper is not interested in taking a license at</p> <p>20            this time." Do you see that, sir?</p> <p>21     A Yes, I see it.</p> <p>22     Q So Juniper had told Swarm prior to</p>

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<p>1 this email that Juniper wasn't interested in 2 taking a license to Swarm's patents, right? 3 MR. KELLY: Object to the form. 4 THE WITNESS: Yes. 5 BY MR. SIGLER: 6 Q All right. And in the second 7 paragraph it says in the second sentence, "Having 8 answered all of your questions, it appears that 9 you have failed to express any position that would 10 prevail in a Markman hearing." 11 Do you see that, sir? 12 A Yes, I see it. 13 Q Do you know what a Markman hearing is? 14 A Yes, I have an idea of what it is. 15 I've never been involved in one. I just have 16 general knowledge of what that is. 17 Q And what's your general knowledge of 18 what a Markman hearing is? 19 A The terms in a specific claim are 20 looked into the definitions, what they mean, and 21 then they see if that mapping from the product 22 that is mapping to. That is my general knowledge.</p>	<p>1 the bottom. It starts with "although." 2 Do you see that paragraph, sir? 3 A Yes, I see it. 4 Q All right. And the first sentence 5 says, "Although you have said Juniper does not 6 require a license, I have to disagree." 7 Do you see that, sir? 8 A I see it, yes. 9 Q So Swarm told Juniper that it required 10 a license to Swarm's patents, right? 11 A Can you please repeat that question? 12 Q Sure. So Mr. Fisher, on behalf of 13 Swarm, is telling Juniper here that Juniper 14 requires a license to Swarm's patents, right? 15 MR. KELLY: Object to form. 16 THE WITNESS: Well, what it says over 17 there is what you just read. It says, "Although 18 you have said Juniper does not require a license, 19 I have to disagree." That's what it says. 20 BY MR. SIGLER: 21 Q Okay. So Mr. Fisher is stating that 22 Juniper does require a license to Swarm's patents,</p>
<p style="text-align: center;">Page 102</p> <p>1 Q And that's a hearing that takes place 2 in court, right? 3 A That is my understanding. 4 Q And that's a hearing that occurs if a 5 company sues another company for patent 6 infringement, right? 7 A As a person who's not an attorney, I 8 don't know. I'm sure they could -- it could be 9 the case, but I don't know if that is for every 10 type of Markman hearing. Again, I don't know. 11 Q Okay, but it's your understanding that 12 that would be a hearing that would take place in a 13 lawsuit, right, sir? 14 A I don't know about a lawsuit. I know 15 it's a hearing that takes place in court, but I 16 don't know if it's related to a lawsuit. 17 Q Okay. So here Mr. Fisher is referring 18 to a hearing that would take place in court, 19 right? 20 A Yes. 21 Q All right. And if we could scroll 22 down to the -- I think it's the third paragraph at</p>	<p style="text-align: center;">Page 104</p> <p>1 right? 2 MR. KELLY: Form. 3 THE WITNESS: Well, what it says, it 4 is stating, "Although you have said Juniper does 5 not require a license, I have to disagree." 6 That's what it says. 7 BY MR. SIGLER: 8 Q So Juniper told Swarm that it doesn't 9 require a license, right? 10 A Well, again, as mentioned here, 11 Mr. Fisher is disagreeing with Juniper. 12 Q And Juniper said we don't require a 13 license to Swarm's patents, right? 14 A Yes. 15 Q And Mr. Fisher, on behalf of Swarm, 16 said no, you're wrong, correct? 17 MR. KELLY: Object to the form. 18 THE WITNESS: Mr. Fisher is 19 disagreeing, as we can see in the letter. 20 BY MR. SIGLER: 21 Q Okay. Well, we'll have the Court take 22 a look at it, and it can come to its own</p>

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<p>1 grammatical understanding of what's going on 2 there.</p> <p>3 Did Swarm at this time believe that 4 Juniper required a license to its patents?</p> <p>5 A Again --</p> <p>6 MR. KELLY: Object to form.</p> <p>7 THE WITNESS: Again, it's important to 8 look back to the initial intention.</p> <p>9 Swarm offered, in this case Juniper, 10 an opportunity to license. It has never been the 11 intention of going into court. Short of us just 12 seeking to license this patent, it never intended 13 to sue anyone, and that letter is not saying that 14 it's going to be suing anyone.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q I just want to know, at this time, did 17 Swarm believe that Juniper was infringing Swarm's 18 patents?</p> <p>19 MR. KELLY: Same objection.</p> <p>20 THE WITNESS: Please repeat that 21 question.</p> <p>22</p>	<p>1 MR. KELLY: This is five times, sir. 2 MR. SIGLER: No, he hasn't. He's said 3 what he wants you guys to tell him to say. 4 I'm just asking because, you know, my 5 client -- my client might face down a willful 6 infringement allegation like Amazon is facing down 7 right now where you all rely on letters like this 8 to say, hey, you were on notice of our patents, 9 and you're willfully infringing.</p> <p>10 So I want to know, at this time in 11 2019, did Swarm believe that Juniper was 12 infringing Swarm's patents?</p> <p>13 MR. KELLY: Object to the form.</p> <p>14 THE WITNESS: Again, the claim chart 15 served the purpose of mapping the claim with a 16 product. That's all we're doing, and we're 17 presenting with a licensing opportunity.</p> <p>18 It has never been the intention of 19 Swarm to sue Juniper, and the facts speak for 20 themselves. There's no legal -- Swarm never 21 threatened Juniper to sue, and we never did 22 anything, and eventually Juniper sued Swarm.</p>
<p>1 BY MR. SIGLER:</p> <p>2 Q It's a yes-or-no -- yes-or-no answer.</p> <p>3 At this time, did Swarm believe that 4 Juniper was infringing Swarm's patents?</p> <p>5 MR. KELLY: Objection.</p> <p>6 THE WITNESS: It doesn't say 7 "infringing" in that letter. Again, we go back to 8 my original statement.</p> <p>9 BY MR. SIGLER:</p> <p>10 Q I'm not asking you about the letter. 11 I'm asking you, at this time, did Swarm believe 12 that Juniper was infringing Swarm's patents?</p> <p>13 MR. KELLY: Object to form.</p> <p>14 THE WITNESS: We never used the term 15 "infringement."</p> <p>16 BY MR. SIGLER:</p> <p>17 Q But did Swarm believe that Juniper was 18 infringing Swarm's patents?</p> <p>19 MR. KELLY: Counsel --</p> <p>20 MR. SIGLER: He's not answering my 21 question, Mr. Kelly. I'm just looking for an 22 answer to my question.</p>	<p>1 BY MR. SIGLER:</p> <p>2 Q And earlier today we saw some 3 correspondence with Apple, right, sir?</p> <p>4 A Earlier today? Can you repeat that 5 question?</p> <p>6 Q Sure. Earlier today we looked at some 7 letters that Swarm sent to Apple, right?</p> <p>8 A Correct.</p> <p>9 Q All right. And in one of those 10 letters that came back from Apple, Apple said to 11 Swarm we're not interested in licensing your 12 patents, right, sir?</p> <p>13 A Correct.</p> <p>14 Q And I believe you told me that -- 15 well, strike that.</p> <p>16 And Swarm didn't reply to that letter, 17 right?</p> <p>18 A We weren't sent a letter?</p> <p>19 Can you repeat that question?</p> <p>20 Q Sure. Swarm didn't reply to Apple's 21 letter saying that Apple wasn't interested in 22 licensing Swarm's patents, right?</p>

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<p>1           MR. KELLY: Object to form.      2           THE WITNESS: Correct, we did not      3 respond.      4           BY MR. SIGLER:      5           Q And you told me earlier today that's      6 because Apple said they weren't interested in      7 taking a license, right?      8           MR. KELLY: Object to form.      9           THE WITNESS: Correct.      10          BY MR. SIGLER:      11          Q And here, sir, Juniper has told Swarm      12 that they're not interested in taking a license,      13 right?      14          A Basically, as you can see on that      15 letter, Juniper provided information related to      16 the claim chart, and then we responded to their      17 concerns on the claim chart.      18          That is the nature of the      19 correspondence. We're responding to concerns      20 raised by Juniper.      21          Q And Juniper had said to Swarm that      22 Juniper wasn't interested in taking a license to</p>	<p>1           MR. KELLY: Object to form.      2           THE WITNESS: Juniper responded, as      3 you show in the previous letter, with some      4 definition of terms, and then we explain those      5 terms.      6           BY MR. SIGLER:      7           Q If Juniper said it wasn't interested      8 in taking a license to Swarm's patents, why did      9 Swarm continue to send Juniper communications?      10          MR. KELLY: Object to form.      11          THE WITNESS: After -- after this      12 letter?      13          BY MR. SIGLER:      14          Q Yes.      15          A At one point, Swarm was granted      16 another patent, and we presented again Juniper the      17 opportunity with a bigger, better -- bigger      18 portfolio of patents.      19          Q You did that because you wanted to      20 make sure Juniper was on notice of that patent,      21 right, sir?      22          MR. KELLY: Object to form.</p>
<p style="text-align: center;">Page 110</p> <p>1 Swarm's patents, right?      2           A At one point -- I have to go back and      3 see the letter to see where that is conveyed.      4           Q Let's scroll up to the beginning of      5 this letter again, please, Mr. Fahner. And I      6 read this to you before, but I'll do it again.      7           The opening of the letter says, "I was      8 surprised and disappointed by your email of      9 October 24 saying Juniper is not interested in      10 taking a license at this time."      11          Juniper told Swarm it was not      12 interested in taking a license, right, sir?      13          MR. KELLY: Object to the form.      14          THE WITNESS: Yes. We can also see      15 there that it says we were continuing the      16 good faith discussions. Those were good faith      17 discussions looking for an opportunity to explore      18 this opportunity. That's it.      19          BY MR. SIGLER:      20          Q But Swarm could have chosen to not      21 reply to Juniper's letter saying Juniper wasn't      22 interested, right?</p>	<p style="text-align: center;">Page 112</p> <p>1           THE WITNESS: Since we had a previous      2 relationship, we thought it was opportunity to      3 present the opportunity one more time.      4           MR. SIGLER: All right, we can take      5 down that document, Mr. Fahner. Let's move on to      6 another one.      7          Let's please bring up Tab P, and      8 I think that would be Exhibit 17?      9          THE REPORTER: 18.      10          MR. SIGLER: Exhibit 18, apologies.      11          (Iniguez Exhibit 18 was marked      12 for identification.)      13          BY MR. SIGLER:      14          Q All right, here we have Exhibit 18 on      15 your screen, Mr. Íñiguez. And Mr. Fahner, if you      16 could go back to the first page real quick. I      17 just wanted to make clear what this is.      18          We filed this as an exhibit earlier in      19 the case, that's why it has this exhibit page on      20 it, but I wanted to ask you about the letter that      21 starts at the second page, please, so if we could      22 go there. Thank you, Mr. Fahner.</p>

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<p>1        Do you see, Mr. Íñiguez, that this is      2        an April 16, 2020, letter?</p> <p>3        A    Correct.</p> <p>4        Q    And it is to two people at Apstra,      5        Inc., right?</p> <p>6        A    Correct.</p> <p>7        Q    Okay. And they are Mansour Karam and      8        Sasha Ratkovic, right?</p> <p>9        A    Correct.</p> <p>10      Q    And it's addressed to them in      11     Menlo Park, California, right?</p> <p>12      A    Yes.</p> <p>13      Q    Okay. And focusing in on the first      14     paragraph of the body there, if we could,      15     Mr. Fahnert -- actually, can we scroll down just a      16     little bit more?</p> <p>17      Do you see there, Mr. Íñiguez, that      18     this is a letter from Mr. Fisher?</p> <p>19      A    That is correct.</p> <p>20      Q    And he's Swarm's IP licensing      21     consultant at this time, right?</p> <p>22      MR. KELLY: Object to the form.</p>	<p>1        not responded to any of those letters."</p> <p>2        Do you see that?</p> <p>3        A    Yes, I do.</p> <p>4        Q    So Apstra hadn't responded to      5        Mr. Fisher's prior three letters, right?</p> <p>6        A    Correct.</p> <p>7        Q    Okay. A little further down in that      8        paragraph, we see here that it says, "I have      9        included with this letter a claim chart that shows      10      the relationship between the '275 patent and      11      Apstra products." Do you see that, sir?</p> <p>12      A    Yes.</p> <p>13      Q    All right. So this letter from Swarm      14     to Apstra includes a claim chart showing the      15     relationship between the '275 patent and Apstra      16     products, right?</p> <p>17      A    Correct.</p> <p>18      Q    And the next sentence says, "The '275      19      claim chart and the earlier provided '004 claim      20      chart use Apstra's own documents to identify claim      21      elements in Apstra products."</p> <p>22      Do you see that, sir?</p>
<p style="text-align: center;">Page 114</p> <p>1        THE WITNESS: Correct.</p> <p>2        BY MR. SIGLER:</p> <p>3        Q    And you're copied on this letter,      4        right, sir?</p> <p>5        A    Yes.</p> <p>6        Q    All right. And now if we could scroll      7        up to the first paragraph, please.</p> <p>8        And the letter opens by saying, "I      9        have written to you on three previous occasions to      10      bring to your attention the relationship between      11      Apstra products and technology developed and      12      patented by Swarm Technology (as claimed,      13      for example, in Swarm's US Patent 9,852,004)."</p> <p>14      Do you see that, sir?</p> <p>15      A    Yes, I do.</p> <p>16      Q    All right. So Mr. Fisher -- well,      17      strike that.</p> <p>18      Based on this letter, this is the      19      fourth letter Mr. Fisher has sent to Apstra,      20      right?</p> <p>21      A    Yes.</p> <p>22      Q    And the next sentence says, "You have</p>	<p style="text-align: center;">Page 116</p> <p>1        A    Yes, I do.</p> <p>2        Q    So based on this, prior to this      3        letter, Swarm had sent a claim chart to Apstra on      4        the Swarm '004 patent, right, sir?</p> <p>5        MR. KELLY: Object to the form.</p> <p>6        THE WITNESS: Correct.</p> <p>7        BY MR. SIGLER:</p> <p>8        Q    And at this time, sir, did Swarm      9        believe that Apstra was infringing Swarm's      10      patents?</p> <p>11      MR. KELLY: Objection, form.</p> <p>12      THE WITNESS: As indicated earlier,      13      the claim chart provided a relationship between      14      the patent and the product. That's all we have      15      provided.</p> <p>16      And the letters that we sent said the      17      same thing, that we're offering an opportunity for      18      licensing.</p> <p>19      BY MR. SIGLER:</p> <p>20      Q    So if Apstra got these claim charts      21      and they concluded that Swarm was accusing them of      22      infringing Swarm's patents, they would have been</p>

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<p>1     mistaken, right?</p> <p>2         MR. KELLY: Object to the form.</p> <p>3         THE WITNESS: Are you asking me to say</p> <p>4         what Apstra thought about those letters? I'm not</p> <p>5         sure about the question. Can you repeat the</p> <p>6         question?</p> <p>7             BY MR. SIGLER:</p> <p>8         Q    Sure. So Apstra received these claim</p> <p>9         charts from Swarm, right?</p> <p>10        A    Yes.</p> <p>11        Q    And if the people at Apstra saw those</p> <p>12         claim charts and thought to themselves Swarm is</p> <p>13         accusing us of infringing its patents, that would</p> <p>14         have been wrong, right?</p> <p>15         MR. KELLY: Object to the form.</p> <p>16         THE WITNESS: We never -- the letter</p> <p>17         never accused Apstra. Again, it is just</p> <p>18         presenting an opportunity. It's showing a</p> <p>19         relationship between the claim and the product.</p> <p>20         That's all what it is.</p> <p>21             BY MR. SIGLER:</p> <p>22         Q    Did -- before Swarm sued Amazon, did</p>	<p>1         seeing claim charts previous to the lawsuit.</p> <p>2             BY MR. SIGLER:</p> <p>3         Q    Okay. Swarm had some communications</p> <p>4         with Cisco about licensing Swarm's patents, right?</p> <p>5         A    Correct.</p> <p>6         Q    And Swarm sent Cisco a letter offering</p> <p>7         to license Swarm's patents in July 2018, right?</p> <p>8         A    Correct.</p> <p>9         Q    And Swarm sent Cisco claim charts</p> <p>10        mapping Swarm's patents to Cisco's products,</p> <p>11        right?</p> <p>12        A    Correct.</p> <p>13        Q    Who drafted those claim charts?</p> <p>14         MR. KELLY: Object to form.</p> <p>15         THE WITNESS: Again, it's same as</p> <p>16         before. I took the initial information, and then</p> <p>17         conveyed the information to my attorney, and then</p> <p>18         we eventually came up with this final product,</p> <p>19         which is the claim chart.</p> <p>20             BY MR. SIGLER:</p> <p>21         Q    Okay. And actually backing up for a</p> <p>22         moment, let's go back to Apstra for a second. I</p>
<p>1             Page 118</p> <p>2         Swarm create claim charts mapping Amazon products</p> <p>3         to Swarm's patent claims?</p> <p>4         MR. KELLY: Object to form.</p> <p>5         THE WITNESS: Before Amazon -- can you</p> <p>6         repeat that question? I want to make sure that I</p> <p>7         get it.</p> <p>8             BY MR. SIGLER:</p> <p>9         Q    Sure. Before Swarm sued Amazon, did</p> <p>10        Swarm create claim charts matching up Amazon's</p> <p>11        products to Swarm's claims?</p> <p>12        A    I'm thinking.</p> <p>13        I don't recall having an official</p> <p>14        claim chart. I get -- I take notes all the time,</p> <p>15        but from my notes into an official claim chart, I</p> <p>16        don't remember.</p> <p>17        Q    Did Swarm ever send Amazon claim</p> <p>18        charts before it sued them?</p> <p>19        MR. KELLY: Object to form.</p> <p>20        THE WITNESS: I'm thinking.</p> <p>21        No, I don't recall doing that. And</p> <p>22        everything we have, we have provided in those</p>	<p>1         forgot to ask a question there.</p> <p>2         Did Apstra ever respond to this letter</p> <p>3         from Mr. Fisher?</p> <p>4         A    No. As stated in the letter, they did</p> <p>5         not respond.</p> <p>6         Q    Did Apstra respond to any of the</p> <p>7         letters that Swarm sent them?</p> <p>8         A    No. As far as I remember, no, they</p> <p>9         have not -- they did not respond.</p> <p>10        Q    Okay. All right, let's shift back to</p> <p>11        Cisco now.</p> <p>12        In the correspondence with Cisco, they</p> <p>13        provided prior art to Swarm's patents, right?</p> <p>14        A    Correct.</p> <p>15        Q    And Cisco questioned the validity of</p> <p>16        Swarm's patents, right?</p> <p>17        MR. KELLY: Object to form.</p> <p>18        THE WITNESS: Well, they provided --</p> <p>19        as you mentioned, they provided prior art, and</p> <p>20        then we responded to that prior art. That is the</p> <p>21        nature of the conversations that we had with</p> <p>22        Cisco.</p>

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<p>1           BY MR. SIGLER:</p> <p>2       Q Okay. So to your recollection, Cisco 3 never said that it thought Swarm's patents were 4 invalid; is that correct?</p> <p>5       MR. KELLY: Objection.</p> <p>6       THE WITNESS: I would have to go and 7 revise all the documentation in order to look for 8 that term that you are referring to.</p> <p>9       BY MR. SIGLER:</p> <p>10      Q Do you understand what "invalidity" 11 means in the patent context?</p> <p>12      A I understand the concept.</p> <p>13      Q And what's that concept?</p> <p>14      A There's a procedure that somebody 15 raises to the United States Patent Office, and 16 then at the end, it determines that a specific 17 patent may not be valid.</p> <p>18      To be more clear or specific, they go 19 after the claims, not necessarily the patent 20 itself.</p> <p>21      Q And do you understand that, 22 for example, a defendant in a patent infringement</p>	<p>1       email, right, sir?</p> <p>2       A Yes.</p> <p>3       Q And it's from Mr. Fisher, right?</p> <p>4       A Correct.</p> <p>5       Q And it is to Theo Foster of Haynes and 6 Boone, right?</p> <p>7       A Yes.</p> <p>8       Q And do you recognize Mr. Foster as an 9 attorney working for Cisco, sir?</p> <p>10      A Yes, I do.</p> <p>11      Q All right. And you are copied on this 12 email, right?</p> <p>13      A Correct.</p> <p>14      Q And Mr. Fisher says, "I have attached 15 a letter in response to your letter of October 11, 16 2019." Do you see that, sir?</p> <p>17      A Yes.</p> <p>18      Q All right, let's take a look at that 19 letter. If we could please go to the second page 20 of this document, Exhibit 19, and -- well, let me 21 start with, Mr. Íñiguez, do you recognize this as 22 the October 29th, 2019, letter referred to in the</p>
<p>1 lawsuit can argue that the patent is invalid?</p> <p>2       A There's a procedure for that. I have 3 never been involved with that, and I don't have 4 any more information to be able to tell you about 5 how that works.</p> <p>6       Q Has Swarm ever had any calls with 7 Cisco or Cisco's attorneys about Swarm's patents?</p> <p>8       MR. KELLY: Object to form.</p> <p>9       THE WITNESS: It is my understanding 10 that all communication was done through email.</p> <p>11       BY MR. SIGLER:</p> <p>12      Q Okay, let's take a look at one of 13 those emails. Mr. Fahner, could you please put 14 Tab Q on the screen, which will be Exhibit 19, I 15 believe.</p> <p>16      (Iniguez Exhibit 19 was marked 17 for identification.)</p> <p>18       BY MR. SIGLER:</p> <p>19      Q All right, do you see this email on 20 the screen that's Exhibit 19, Mr. Íñiguez?</p> <p>21      A Yes, I see it.</p> <p>22      Q And this is an October 29, 2019,</p>	<p>1       email?</p> <p>2       A Yes, I do.</p> <p>3       Q All right. And if we could focus on 4 the paragraph that says "First:" please.</p> <p>5       A I see it.</p> <p>6       Q Okay. Thank you, sir.</p> <p>7       It says, "You again took issue with 8 Swarm's identification of 'controller' in the 9 Cisco device. This issue can be summarized by 10 asking whether column A below on the left, which 11 sets forth the '004 claim language is equivalent 12 to column B on the right which describes the Cisco 13 device as described in Cisco references."</p> <p>14      Do you see that, sir?</p> <p>15      A Yes, I see it.</p> <p>16      Q All right. Do you know what 17 Mr. Fisher meant here when he said "equivalent"?</p> <p>18      MR. KELLY: Objection, form.</p> <p>19      THE WITNESS: Well, it's a mapping 20 of -- mapping between what the claim language is 21 saying and a specific product.</p>
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<p>1 BY MR. SIGLER:</p> <p>2 Q Okay. So he's saying that the claim</p> <p>3 language is the same as what's shown in the Cisco</p> <p>4 device, right?</p> <p>5 MR. KELLY: Object to form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q And below that is a claim chart,</p> <p>9 right, sir?</p> <p>10 A Okay, I can see it.</p> <p>11 What is the question?</p> <p>12 Q That's a claim chart, right, sir?</p> <p>13 A This is -- correct, this is a portion</p> <p>14 of a claim chart.</p> <p>15 Q All right. And if we could go further</p> <p>16 into this document, it's the page ending with 224,</p> <p>17 please. And if we could go to the top of the</p> <p>18 screen, that paragraph at the top of the screen,</p> <p>19 please.</p> <p>20 And there, sir, in the final sentence</p> <p>21 of that paragraph, do you see that it says, "A</p> <p>22 claim chart showing the relationship of the</p>	<p>1 Q All right. And there's an attachment.</p> <p>2 It says "Cisco response to Swarm's 10-29-2019</p> <p>3 Letter," right?</p> <p>4 A Yes.</p> <p>5 Q All right. And Mr. Fisher says,</p> <p>6 "Latest from Cisco. I haven't studied it in</p> <p>7 detail yet." Do you see that, sir?</p> <p>8 A Correct.</p> <p>9 Q So Mr. Fisher was keeping you apprised</p> <p>10 on the communications with Cisco at this time,</p> <p>11 right?</p> <p>12 A That is correct.</p> <p>13 Q All right. And he goes on to say,</p> <p>14 "They have not cited any new art."</p> <p>15 Do you see that, sir?</p> <p>16 A Yes.</p> <p>17 Q And he goes on to say, "I have your</p> <p>18 new '777 claim chart, but am still working my way</p> <p>19 through the references."</p> <p>20 Do you see that, sir?</p> <p>21 A Yes, I see it.</p> <p>22 Q And in referring to your new '777</p>
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<p>1 '777 patent to Cisco product is appended below."</p> <p>2 A Yes, I see.</p> <p>3 Q So Mr. Fisher is providing a claim</p> <p>4 chart mapping the claims of the '777 patent to</p> <p>5 Cisco's product, right?</p> <p>6 A That is correct.</p> <p>7 Q All right, let's take a look at</p> <p>8 another document regarding Cisco. Mr. Fahnert,</p> <p>9 could you please put Tab R on the screen? And</p> <p>10 this will be Exhibit 20.</p> <p>11 (Iniguez Exhibit 20 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. SIGLER:</p> <p>14 Q Is that on the screen, sir?</p> <p>15 A Yes, I can see it.</p> <p>16 Q All right. And let's start with the</p> <p>17 email at the top here, sir. Do you see it's an</p> <p>18 email from Mr. Fisher to you?</p> <p>19 A Yes, I can see it.</p> <p>20 Q All right. And it's dated</p> <p>21 November 27th, 2019, right?</p> <p>22 A Yes.</p>	<p>1 claim chart, is he referring to a claim chart for</p> <p>2 that patent that you created?</p> <p>3 MR. KELLY: Object to form.</p> <p>4 THE WITNESS: Correct. This is a</p> <p>5 draft that I provided to John, and then we</p> <p>6 reviewed it together, and then by the end we get a</p> <p>7 final product.</p> <p>8 BY MR. SIGLER:</p> <p>9 Q Okay. And so at this time, you were</p> <p>10 aware that Cisco had cited prior art to</p> <p>11 Mr. Fisher, right?</p> <p>12 MR. KELLY: Object to form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Let's push ahead in the document to</p> <p>16 the page that ends in 208, please. Thank you,</p> <p>17 Mr. Fahnert. And let's focus on the portion of</p> <p>18 this that has the heading, it says "Invalidity."</p> <p>19 A Okay, I see it.</p> <p>20 Q Do you see that, sir? All right.</p> <p>21 And that paragraph starts with the</p> <p>22 sentence, "As you requested, we previously</p>

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<p>1 provided a copy of the prior art article      2 'SETI@Home- Massively Distributed Computing for      3 SETI' for Swarm's review."      4       Do you see that, sir?      5       A That is correct.      6       Q All right. And in this letter from --      7 well, let me back up for a moment. I apologize.      8 Let's go back to the page that ends in 206,      9 please.      10      Do you see, sir, that this is a letter      11 from -- or excuse me, a letter to Mr. Fisher?      12      A Yes, I can see it.      13      Q And it's dated November 27, 2019,      14 right?      15      A Correct.      16      Q And it's from Mr. Foster, who is the      17 lawyer for Cisco, right?      18      A Yes.      19      Q All right. Now, let's go back to      20 page 208, invalidity discussion.      21      Okay, so back here on page 208 of      22 Exhibit 20, Mr. Íñiguez, there's a paragraph with</p>	<p>1 correct.      2       Q And do you understand the concept in      3 patent law of obviousness?      4       A I understand. Can you explain that to      5 me to make sure I got it correct?      6       Q Let me ask you a more basic question.      7           Is it your understanding here in this      8 letter, sir, that Cisco is expressing their      9 opinion that Swarm's patents are invalid?      10       MR. KELLY: Object to form.      11       THE WITNESS: Yes, I can see that.      12       BY MR. SIGLER:      13       Q Okay. All right.      14           Do you recall how Swarm responded to      15 that opinion from Cisco?      16       A Do I recall responding to this letter?      17           Is that what you're asking? Can you repeat the      18 question, please?      19       Q Sure. Do you know if Swarm responded      20 to this letter?      21       A Yes, we did.      22       Q Okay. And do you recall what Swarm</p>
<p style="text-align: center;">Page 130</p> <p>1 a heading that says "Invalidity," right?      2       A Correct.      3       Q And we talked a little bit about the      4 first sentence there, but let's go on to the      5 second sentence in that paragraph, which says, "We      6 believe that SETI@Home is highly relevant to the      7 asserted claims of both the '004 and the '777      8 patents." Do you see that, sir?      9       A Okay, let me review this. Give me      10 just one second. (Witness reviewing document.)      11       Yes, I can see it.      12       Q And the next sentence says, "Together      13 with the background knowledge of a person of      14 ordinary skill in the art, the article teaches or      15 renders obvious the asserted claims as Swarm      16 interprets them."      17       Do you see that, sir?      18       A I see it, yes.      19       Q All right. So here Cisco is telling      20 Swarm that Cisco believes the claims of Swarm's      21 patents are obvious, right, sir?      22       A Yeah, that's an opinion from Cisco,</p>	<p style="text-align: center;">Page 132</p> <p>1 said about Cisco's opinion that the patents are      2 invalid?      3       A I don't recall the exact content of      4 the letter, but do you have it in your possession?      5 If you showed that to me, then that would be very      6 helpful.      7       Q Sure, we can do that.      8           Mr. Fahner, let's put Tab S on the      9 screen, please, which will be Exhibit 21.      10       (Íñiguez Exhibit 21 was marked      11 for identification.)      12       BY MR. SIGLER:      13       Q All right, you see here, Mr. Íñiguez,      14 this is an email from Mr. Fisher, right?      15       A Yes.      16       Q And it's to Mr. Foster, Cisco's      17 attorney, right?      18       A Correct.      19       Q And you're copied, right?      20       A Yes.      21       Q And it's dated December 13, 2019,      22 right?</p>

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<p>1 A Correct.</p> <p>2 Q And Mr. Fisher says to Mr. Foster that</p> <p>3 he has attached a letter responding to Cisco's</p> <p>4 November 27, 2019, letter, right?</p> <p>5 A That is correct.</p> <p>6 Q And that's the letter we just looked</p> <p>7 at, right, sir, in Exhibit 20?</p> <p>8 A Yes.</p> <p>9 Q All right, let's go to the second page</p> <p>10 of this document, please.</p> <p>11 And do you recognize this,</p> <p>12 Mr. Íñiguez, as the December 13th, 2019, letter to</p> <p>13 Mr. Foster from Mr. Fisher?</p> <p>14 A Yes.</p> <p>15 Q And Mr. Fahner, could you please take</p> <p>16 us to the last page of this document, which ends</p> <p>17 in 201? Let's focus in on the second to last</p> <p>18 paragraph, please, that starts with "furthermore."</p> <p>19 And here Mr. Fisher, on behalf of</p> <p>20 Swarm says, "Furthermore, the SETI reference fails</p> <p>21 to disclose the claim requirement 'on a</p> <p>22 plug-and-play basis' of the '004 patent."</p>	<p>1 document, please show me the document so that I</p> <p>2 can elaborate.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Did Swarm ever tell Cisco that it</p> <p>5 agreed that any of Swarm's patent claims are</p> <p>6 invalid?</p> <p>7 MR. KELLY: Objection, form.</p> <p>8 THE WITNESS: Are you asking if Cisco</p> <p>9 ever told Swarm if the patents were invalid? I'm</p> <p>10 not understanding -- I don't understand the</p> <p>11 question.</p> <p>12 BY MR. SIGLER:</p> <p>13 Q Yeah, my question is the other way</p> <p>14 around. Did Swarm ever tell Cisco that Swarm</p> <p>15 agreed with Cisco's opinion that Swarm's patents</p> <p>16 are invalid?</p> <p>17 A No.</p> <p>18 Q Okay. Did Swarm ever tell Juniper</p> <p>19 that Juniper didn't require a license to Swarm's</p> <p>20 patents?</p> <p>21 MR. KELLY: Object to the form.</p> <p>22 THE WITNESS: I'm trying to see.</p>
<p style="text-align: center;">Page 134</p> <p>1 Do you see that, sir?</p> <p>2 A Yes, I see it.</p> <p>3 Q So here Mr. Fisher is expressing</p> <p>4 Swarm's opinion that the '004 patent isn't</p> <p>5 invalid, right?</p> <p>6 A Basically, yes, it is responding to</p> <p>7 Cisco's concern.</p> <p>8 Q Okay. Did Swarm ever tell Cisco that</p> <p>9 Swarm didn't believe that Cisco needed a license</p> <p>10 to Swarm's patents?</p> <p>11 MR. KELLY: Object to the form.</p> <p>12 THE WITNESS: Can you please repeat</p> <p>13 that question?</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Sure. Did Swarm ever tell Cisco that</p> <p>16 Cisco didn't need a license to Swarm's patents?</p> <p>17 A We --</p> <p>18 MR. KELLY: Object to the form.</p> <p>19 THE WITNESS: As mentioned before, the</p> <p>20 entire conversation is based on presenting Cisco</p> <p>21 with an opportunity to license those patents.</p> <p>22 If you're referring to a specific</p>	<p style="text-align: center;">Page 136</p> <p>1 We're offering an opportunity to --</p> <p>2 we're offering an opportunity to license those</p> <p>3 patents. Were you asking us -- can you</p> <p>4 please request -- can you please ask again so that</p> <p>5 I can understand what you're asking?</p> <p>6 BY MR. SIGLER:</p> <p>7 Q Sure. Did Swarm ever tell Juniper</p> <p>8 that Swarm agreed with Juniper's opinion that</p> <p>9 Juniper didn't require a license to Swarm's</p> <p>10 patents?</p> <p>11 MR. KELLY: Object to the form.</p> <p>12 THE WITNESS: No.</p> <p>13 MR. SIGLER: Why don't we -- it's a</p> <p>14 good spot for a break, I think, so why don't we</p> <p>15 take a break.</p> <p>16 MR. KELLY: Mr. Sigler, we just had</p> <p>17 lunch brought in. Do you mind if we take</p> <p>18 20 minutes?</p> <p>19 MR. SIGLER: No, that's fine. I was</p> <p>20 going to ask if you guys wanted to fit in lunch,</p> <p>21 given the time there. So yeah, 20, 30, minutes is</p> <p>22 fine.</p>

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<p>1           MR. KELLY: Okay, sounds great. We'll 2       bow back in at 12:22, 3:22 your time. 3           THE VIDEOGRAPHER: Okay, going off the 4       record. The time is 11:53. 5           (A break was taken.) 6           THE VIDEOGRAPHER: We are back on 7       record. The time is 12:37. 8           BY MR. SIGLER: 9           Q All right, welcome back, Mr. Íñiguez. 10          Mr. Fahnert, can you please put Tab T 11       on the screen? And I believe this will be 12       Exhibit 22. 13          THE VIDEOGRAPHER: Correct. 14          MR. SIGLER: Thank you, sir. 15          (Íñiguez Exhibit 22 was marked 16       for identification.) 17          BY MR. SIGLER: 18          Q All right, Mr. Íñiguez, you have 19       Exhibit 22 on your screen there, sir? 20          A Yes, I can see it. 21          Q All right. And do you see that this 22       is a letter that has a Swarm Technology logo at</p>	<p>1       demonstrates the correlation between claim 1 of 2       the '004 patent and Arista's ZTP product, right? 3           A Correct. 4           Q All right. And then at the end of the 5       letter, he in the final paragraph asks -- well, 6       strike that. He says that Swarm would welcome the 7       opportunity to discuss this licensing opportunity 8       with Arista, right? 9           A That's correct. 10          Q All right, we can pull that one down, 11       and let's put up Tab U, please, which will be 12       Exhibit 23. 13           (Íñiguez Exhibit 23 was marked 14       for identification.) 15          BY MR. SIGLER: 16          Q Mr. Íñiguez, do you see that this is 17       an email from a Sean Christofferson at Arista? 18          A Correct. 19          Q And it's addressed to Mr. Fisher, 20       right? 21          A Yes. 22          Q And it's dated September 12, 2019,</p>
<p>1           the top, sir? 2          A Correct. 3          Q And this is another letter from 4       Mr. Fisher, sir? 5          A That is correct. 6          Q And you're copied on this letter, sir? 7          A I am, yes. 8          Q And this letter is dated July 5th, 9       2019, correct? 10         A That is correct. 11         Q And it's addressed to Jayshree Ullal 12       and Mark Taxay at Arista Networks, right, sir? 13         A That is correct. 14         Q And it's addressed to them in 15       Santa Clara, California, right? 16         A Yes. 17         Q Let's focus on the second paragraph, 18       please. Do you see there in the second paragraph 19       that Mr. Fisher indicates that he's enclosing a 20       claim chart, sir? 21         A That is correct. 22         Q And he says that the chart</p>	<p>1       right? 2          A Yes. 3          Q And in this email, in the first 4       sentence, sir, it says, "I write to reply to your 5       letter of August 15, 2019 regarding an offer to 6       license certain Swarm technology." 7           Do you see that? 8          A I'm trying to find the -- yeah. 9           This is the first line? 10         Q Yeah. He says, "I write to reply to 11       your letter of August 15, 2019 regarding an offer 12       to license certain Swarm technology." 13           Do you see that, sir? 14         A Yes, I see it. 15         Q All right. And Mr. Christofferson 16       goes on to say -- and as we see at the bottom of 17       the screen here, sir, Mr. Christofferson 18       identifies himself as the Deputy General Counsel 19       of Arista, right? 20         A Yes. 21         Q And he's located in Santa Clara, 22       California, right?</p>

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<p>1 A That is correct.</p> <p>2 Q All right. And going back up to the 3 body of the letter, he continues on by saying, "We 4 have reviewed the patents you cited, and it is not 5 clear that they have anything to do with Arista's 6 ZTP feature. Setting that issue aside, our ZTP 7 feature appears to have been introduced to the 8 market several years before the priority date of 9 those patents."</p> <p>10 Are you familiar with the concept of a 11 priority date, sir?</p> <p>12 A Yes, I am.</p> <p>13 Q All right. And do you understand here 14 that Mr. Christofferson is making an argument that 15 the Swarm Patents aren't valid, sir?</p> <p>16 MR. KELLY: Objection to the form.</p> <p>17 THE WITNESS: Let me see if I can find 18 that word "invalid" in the letter.</p> <p>19 Give me a second.</p> <p>20 (Witness reviewing Exhibit 23.)</p> <p>21 I could not find the word "invalid."</p> <p>22</p>	<p>1 BY MR. SIGLER:</p> <p>2 Q Okay. And he closes the letter by 3 saying, "[I'm] certainly happy to discuss further, 4 but at this time I don't see the value of Swarm's 5 portfolio to Arista."</p> <p>6 Do you see that, sir?</p> <p>7 A Yes, I see that.</p> <p>8 Q And do you recall Mr. Fisher responded 9 to Mr. Christofferson?</p> <p>10 A Are you asking me if Mr. Fisher 11 responded to that email?</p> <p>12 Q Yeah. I'll make it easy for you. 13 Let's just look at that.</p> <p>14 Can we please put Tab V on the screen? 15 And we'll mark it as Exhibit 23, please.</p> <p>16 THE VIDEOGRAPHER: 24.</p> <p>17 MR. SIGLER: 24, I'm sorry. (Íñiguez Exhibit 24 was marked for identification.)</p> <p>18 BY MR. SIGLER:</p> <p>19 Q All right, Mr. Íñiguez, do you see 20 that this is an email from Mr. Fisher?</p> <p>21</p>
<p style="text-align: center;">Page 142</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay. Well, you'd agree that he's 3 saying that Arista's ZTP feature was introduced to 4 the market before Swarm applied for its patents, 5 right?</p> <p>6 A That is what the letter says, correct.</p> <p>7 Q Okay. And if that were true, then 8 Swarm's patents would be invalid, right, sir?</p> <p>9 MR. KELLY: Object to the form.</p> <p>10 THE WITNESS: Okay, can you rephrase 11 that question? That was a very interesting 12 question, by the way, but can you please rephrase 13 it?</p> <p>14 BY MR. SIGLER:</p> <p>15 Q Sure. If what Mr. Christofferson was 16 saying were true, that Arista's ZTP feature was 17 introduced before Swarm filed for its patents, 18 then Swarm's patents would be invalid, right?</p> <p>19 MR. KELLY: Object to the form.</p> <p>20 THE WITNESS: That is for the 21 United States Patent Office to decide.</p> <p>22</p>	<p style="text-align: center;">Page 144</p> <p>1 A Yes, I see it.</p> <p>2 Q And it's dated May 6, 2020, right?</p> <p>3 A Yes.</p> <p>4 Q And it's regarding Swarm Technology 5 Licensing Offer, right?</p> <p>6 A Correct.</p> <p>7 Q And it's to Mr. Christofferson of 8 Arista, right?</p> <p>9 A That is correct.</p> <p>10 Q Okay. And you're copied on this 11 email, correct?</p> <p>12 A Yes.</p> <p>13 Q All right. And the email indicates 14 that two claim charts are attached, correct?</p> <p>15 A That is correct.</p> <p>16 Q And in the middle of the email, 17 actually, there's a line that starts with "I have 18 attached." It says, "I have attached to this 19 email two further claim charts."</p> <p>20 Do you see that, sir?</p> <p>21 A Yes, I see it.</p> <p>22 Q Okay. So Swarm sent to Arista in</p>

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<p>1 May 2020 two additional claim charts, right, sir?</p> <p>2 A That is correct.</p> <p>3 Q All right. And in the opening line</p> <p>4 here, Mr. Fisher says that, "In an email to me on</p> <p>5 September 12, 2019 you stated that you saw no</p> <p>6 value to Arista in Swarm's patent portfolio."</p> <p>7 Do you see that, sir?</p> <p>8 A Correct.</p> <p>9 Q And then Mr. Fisher says, "Swarm</p> <p>10 disagrees with your conclusion." Right, sir?</p> <p>11 A Correct.</p> <p>12 Q All right. And Mr. Fisher closes this</p> <p>13 letter by saying, "I would like to have an</p> <p>14 opportunity to discuss such a licensing</p> <p>15 opportunity with you."</p> <p>16 Do you see that, sir?</p> <p>17 A Yes, I see it.</p> <p>18 Q Did Mr. Fisher, or any other</p> <p>19 representative of Swarm, ever talk to Arista on</p> <p>20 the phone about a licensing opportunity?</p> <p>21 MR. KELLY: Object to the form.</p> <p>22 THE WITNESS: I don't know. I don't</p>	<p>1 Q And you're copied on this letter, sir?</p> <p>2 A Yes.</p> <p>3 Q And it's addressed to the President</p> <p>4 and General Counsel of Aruba Networks in</p> <p>5 Santa Clara, California, right?</p> <p>6 A That is correct.</p> <p>7 Q That's dated July 5, 2019, right?</p> <p>8 A Yes.</p> <p>9 Q All right. And similar to the letter</p> <p>10 we looked at to Arista, this one indicates that</p> <p>11 Mr. Fisher is enclosing a copy of a claim chart</p> <p>12 correlating the '004 patent to Aruba's products,</p> <p>13 right?</p> <p>14 A That is correct.</p> <p>15 Q Okay. And he says that Swarm would</p> <p>16 welcome the opportunity to discuss a licensing</p> <p>17 opportunity with Aruba, right?</p> <p>18 A That is correct.</p> <p>19 MR. SIGLER: Mr. Fahnert, please put</p> <p>20 Tab X on the screen, and we'll identify that as</p> <p>21 Exhibit 26.</p> <p>22</p>
<p style="text-align: center;">Page 146</p> <p>1 know the answer. I don't recall that.</p> <p>2 BY MR. SIGLER:</p> <p>3 Q You don't -- you don't remember any</p> <p>4 phone call with Arista, sir?</p> <p>5 A Arista? Is that the one that is</p> <p>6 related to HP? Can you refresh my memory?</p> <p>7 There's one --</p> <p>8 Q That's Aruba, sir.</p> <p>9 A Okay. In that case, the answer is I</p> <p>10 don't recall. The answer is no, I don't recall</p> <p>11 having any conversations with Arista.</p> <p>12 Q Okay, thank you for that, sir.</p> <p>13 Mr. Fahnert, let's put Tab W on the</p> <p>14 screen and identify that as Exhibit 25.</p> <p>15 (Iniguez Exhibit 25 was marked</p> <p>16 for identification.)</p> <p>17 THE WITNESS: I can see it.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Thank you, sir.</p> <p>20 And this is another letter from</p> <p>21 Mr. Fisher on behalf of Swarm, right?</p> <p>22 A That is correct.</p>	<p style="text-align: center;">Page 148</p> <p>1 (Iniguez Exhibit 26 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. SIGLER:</p> <p>4 Q And Mr. Íñiguez -- oh, I'm sorry, sir,</p> <p>5 go ahead.</p> <p>6 A Yeah, I can see it.</p> <p>7 Q All right. And you see this is a</p> <p>8 letter from Deanna Kwong of HP to Mr. Fisher?</p> <p>9 A That is correct.</p> <p>10 Q And it's dated September 5, 2019,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q And Ms. Kwong says she's writing in</p> <p>14 response to correspondence from Mr. Fisher dated</p> <p>15 July 5, 2019, and August 15, 2019, right?</p> <p>16 A That is correct.</p> <p>17 Q And at the end she says, "Please also</p> <p>18 reach out to let me know if you would like to set</p> <p>19 up a time to discuss why HPE is not interested in</p> <p>20 and does not need a license to U.S. Patent Nos;</p> <p>21 9,852,004 &amp; 9,146,777."</p> <p>22 Do you see that, sir?</p>

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<p>1 A Yes, I see.</p> <p>2 Q So HPE was telling Swarm through this</p> <p>3 letter that it wasn't interested in a license to</p> <p>4 Swarm's patents, right?</p> <p>5 A That is correct.</p> <p>6 Q All right. In fact, HPE says they</p> <p>7 believed that they don't need a license to the</p> <p>8 '004 patent and '777 patents, right?</p> <p>9 A That is correct.</p> <p>10 Q Okay, we can take that down, and</p> <p>11 please, Mr. Fahnert, put up Tab Y.</p> <p>12 A Is that a question?</p> <p>13 Q No.</p> <p>14 A Oh, never mind.</p> <p>15 Q This should be Tab Y, and it will be</p> <p>16 identified as Exhibit 27.</p> <p>17 (Iniguez Exhibit 27 was marked</p> <p>18 for identification.)</p> <p>19 THE WITNESS: I can see it.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay. And here, Mr. Íñiguez, we have</p> <p>22 an email chain between Ms. Kwong and Mr. Fisher,</p>	<p>1 applicable, essentially, what they said over</p> <p>2 there, because they were making reference to a</p> <p>3 ZTP patent -- patent. That was -- that was the</p> <p>4 entire conversation.</p> <p>5 Q Okay. So they referred to a</p> <p>6 ZTP patent, sir?</p> <p>7 A That is correct.</p> <p>8 Q And did they believe that that patent</p> <p>9 was prior art to Swarm's patents?</p> <p>10 A That was -- that was what they</p> <p>11 mentioned, correct.</p> <p>12 Q Okay. So HPE said that they believed</p> <p>13 that that patent rendered Swarm's patents invalid?</p> <p>14 A They didn't just draw the words. They</p> <p>15 simply said that they were not interested because</p> <p>16 they had a patent on their ZTP.</p> <p>17 Q Okay. And they believed that that</p> <p>18 patent was prior art, and that it was earlier than</p> <p>19 Swarm's patents, right?</p> <p>20 MR. KELLY: Objection, form.</p> <p>21 THE WITNESS: That was their opinion,</p> <p>22 correct.</p>
<p>1 right?</p> <p>2 A Yes.</p> <p>3 Q And in the email at the top, Ms. Kwong</p> <p>4 asks Mr. Fisher if he can be available for a call</p> <p>5 on the following day, right?</p> <p>6 A That is correct.</p> <p>7 Q All right. Did Mr. Fisher have a call</p> <p>8 with Ms. Kwong from HPE?</p> <p>9 A Yes, he did.</p> <p>10 Q Were you on that call?</p> <p>11 A Yes, I was.</p> <p>12 Q And did HPE say on the call why they</p> <p>13 believed they didn't need a license to Swarm's</p> <p>14 patents?</p> <p>15 A I don't remember the exact words they</p> <p>16 used, but essentially they said that they were not</p> <p>17 interested in the licensing opportunity.</p> <p>18 Q Did they explain why?</p> <p>19 A They explained why, yes.</p> <p>20 Can you scroll down a little bit? I</p> <p>21 want to see the context of the letter.</p> <p>22 Yeah, they said that it was not</p>	<p>1 BY MR. SIGLER:</p> <p>2 Q Okay. And did HPE say -- well, strike</p> <p>3 that.</p> <p>4 Did HPE say that they believed that</p> <p>5 their products didn't match Swarm's patent claims?</p> <p>6 MR. KELLY: Object to the form.</p> <p>7 THE WITNESS: They did not get into</p> <p>8 that level of specifics. They simply said we're</p> <p>9 not interested because they had a ZTP patent.</p> <p>10 It was a brief conversation.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q About how long did it last?</p> <p>13 A I would say between 5 and 10 minutes</p> <p>14 perhaps.</p> <p>15 Q Okay. And after that conversation in</p> <p>16 2019 with HPE, has Swarm had any other</p> <p>17 communications with HPE?</p> <p>18 A Not that I am aware of. With this, we</p> <p>19 provided the email, but from the top of my head, I</p> <p>20 don't remember having other conversations with</p> <p>21 HPE.</p> <p>22 Q Okay. You can take that exhibit down,</p>

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<p>1 Mr. Fahnert.</p> <p>2 Are you familiar the company called</p> <p>3 RPX, Mr. Íñiguez?</p> <p>4 A Yes, I am.</p> <p>5 Q Who's RPX?</p> <p>6 A It is a company that contacted</p> <p>7 John Fisher with the possibility of buying the</p> <p>8 license from -- licenses from Swarm.</p> <p>9 And it is my understanding, based on</p> <p>10 their website, that they buy licenses -- or no,</p> <p>11 they buy patents, and then they offer some type of</p> <p>12 licensing to different companies. That's the</p> <p>13 business model.</p> <p>14 Q How did they contact Mr. Fisher?</p> <p>15 A That's a very interesting question,</p> <p>16 because we asked him who -- who told us [sic]</p> <p>17 about us, and they said that it was confidential.</p> <p>18 Q Did RPX --</p> <p>19 A I'm sorry.</p> <p>20 Q Go ahead.</p> <p>21 A Oh, somebody told us to contact us,</p> <p>22 and we don't know who that company is.</p>	<p>1 is "MUTUAL NONDISCLOSURE AGREEMENT," right?</p> <p>2 A Correct.</p> <p>3 Q And it says that the Agreement is made</p> <p>4 and entered into as of January 20th, 2020, right,</p> <p>5 sir?</p> <p>6 A Yes.</p> <p>7 Q Between RPX, with its principal place</p> <p>8 of business in San Francisco, right, sir?</p> <p>9 A That is correct.</p> <p>10 Q And Swarm, correct, sir?</p> <p>11 A Correct.</p> <p>12 Q All right. Is this an agreement that</p> <p>13 RPX provided to Swarm?</p> <p>14 A I do not recall who provided the</p> <p>15 agreement. I would need to ask John Fisher to</p> <p>16 refresh my memory.</p> <p>17 Q And if we could take a look at the</p> <p>18 first numbered paragraph that says "Purpose."</p> <p>19 It says there, "The parties wish to</p> <p>20 explore a business opportunity of mutual</p> <p>21 interest." Do you see that, sir?</p> <p>22 A Yes, I see.</p>
<p style="text-align: center;">Page 154</p> <p>1 Q Okay. Did RPX contact Mr. Fisher by</p> <p>2 email?</p> <p>3 A That I'm not sure. I don't recall.</p> <p>4 It could have been email or phone. I do not know.</p> <p>5 MR. SIGLER: Mr. Fahnert, can you</p> <p>6 please put Tab BB on the screen, and we'll</p> <p>7 identify this as Exhibit 28.</p> <p>8 (Iniguez Exhibit 28 was marked</p> <p>9 for identification.)</p> <p>10 BY MR. SIGLER:</p> <p>11 Q And Mr. Íñiguez, there's an exhibit</p> <p>12 letter on here because this is a document that was</p> <p>13 previously filed in this case as an exhibit</p> <p>14 attached to a brief, that's why that's there.</p> <p>15 So if we could please go to the second</p> <p>16 page of the document, Mr. Fahnert, and if we could</p> <p>17 blow up the opening paragraph and title, please.</p> <p>18 Do you recall a Mutual Nondisclosure</p> <p>19 Agreement that Swarm entered with RPX,</p> <p>20 Mr. Íñiguez?</p> <p>21 A That is correct.</p> <p>22 Q Okay. And the title of this document</p>	<p style="text-align: center;">Page 156</p> <p>1 Q What was that business opportunity of</p> <p>2 mutual interest?</p> <p>3 A As I mentioned before, RPX contacted</p> <p>4 Swarm with the possibility of buying Swarm's</p> <p>5 patents.</p> <p>6 Q Did RPX make an offer to buy Swarm's</p> <p>7 patents?</p> <p>8 A John and RPX had a conversation. I</p> <p>9 was not there. And I know they talked about it,</p> <p>10 and at the end, John said that it was not a</p> <p>11 serious proposal, and that was the end of it.</p> <p>12 Q Okay. So Mr. Fisher had a discussion</p> <p>13 with RPX about a possible sale, right?</p> <p>14 A The discussion was about -- correct,</p> <p>15 it was about RPX being interested in buying</p> <p>16 Swarm's patents.</p> <p>17 Q Okay. Mr. Fahnert, can you take us to</p> <p>18 the final page of this document and the</p> <p>19 "Miscellaneous" section, please.</p> <p>20 Do you recall this part of the</p> <p>21 agreement, Mr. Íñiguez?</p> <p>22 A Give me just one second to read this.</p>

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<p>1        Yes.</p> <p>2        Q   Okay. And you signed this agreement,</p> <p>3        right, sir?</p> <p>4        A   Yes, I did.</p> <p>5        Q   And through this section here, the</p> <p>6        Miscellaneous section, you agreed on behalf of</p> <p>7        Swarm that any actions arising out of this</p> <p>8        agreement would be heard in San Francisco, right?</p> <p>9        A   That is correct.</p> <p>10      Q   All right. Had Swarm entered any</p> <p>11      other agreements stating that disputes under the</p> <p>12      agreement will be heard in California?</p> <p>13      A   It went from my memory.</p> <p>14      Give me just a second.</p> <p>15      If we had NDAs, we have disclosed</p> <p>16      those to you. On the top of my head, I don't</p> <p>17      remember, but perhaps you're going to help me.</p> <p>18      Q   Well, the versions that I got are</p> <p>19      redacted, so I can't help you, but we'll get to</p> <p>20      that.</p> <p>21      All right, let's go to -- we can take</p> <p>22      that off the screen, please, Mr. Fahnert, and</p>	<p>1        right?</p> <p>2        A   Correct.</p> <p>3        Q   All right. And it shows there that it</p> <p>4        attaches a document called "Question 3."</p> <p>5        Do you see that?</p> <p>6        A   Yes, I see that.</p> <p>7        Q   Do you recall what's in that</p> <p>8        Question 3 document?</p> <p>9        A   I do not remember this from top of my</p> <p>10      head. I know that the content is confidential.</p> <p>11      Q   Why is it confidential?</p> <p>12      MR. KELLY: Object to the form.</p> <p>13      THE WITNESS: Because it's a company</p> <p>14      trade secret.</p> <p>15      BY MR. SIGLER:</p> <p>16      Q   All right, let's take a look at the</p> <p>17      third page of this document that ends in 317.</p> <p>18      And Mr. Íñiguez, is this the</p> <p>19      Question 3 PDF that was attached to the email we</p> <p>20      were just looking at?</p> <p>21      A   Correct.</p> <p>22      Q   And it says at the top "Question 3,</p>
<p style="text-align: center;">Page 158</p> <p>1        let's go to Tab Z, please. And what exhibit</p> <p>2        number will this be?</p> <p>3        THE VIDEOGRAPHER: 29.</p> <p>4        (Íñiguez Exhibit 29 was marked</p> <p>5        for identification.)</p> <p>6        BY MR. SIGLER:</p> <p>7        Q   Okay, we're looking at Exhibit 29.</p> <p>8        Do you have that on the screen there?</p> <p>9        A   I see.</p> <p>10      Q   Yeah, and if we could actually pull</p> <p>11      back out so Mr. Íñiguez can see the whole thing.</p> <p>12      Sir, this is a chain of emails between</p> <p>13      Mr. Fisher and Ryan Hanneken of RPX.</p> <p>14      Do you see that, sir?</p> <p>15      A   Yes, I see.</p> <p>16      Q   And you are BCC'd on the top email,</p> <p>17      right, sir?</p> <p>18      A   Correct.</p> <p>19      Q   And that top email is from Mr. Fisher</p> <p>20      to Mr. Hanneken, right?</p> <p>21      A   That is correct.</p> <p>22      Q   And it's dated January 26, 2020,</p>	<p style="text-align: center;">Page 160</p> <p>1        Financial Consideration," right?</p> <p>2        A   Correct.</p> <p>3        Q   All right. And then the entire thing</p> <p>4        is covered up by a big black box that says</p> <p>5        "Redacted," right?</p> <p>6        A   That is correct.</p> <p>7        Q   All right. So you understand that</p> <p>8        means I can't see what's in there, right?</p> <p>9        A   That is correct.</p> <p>10      Q   All right. So what is stated in this</p> <p>11      financial considerations document, sir?</p> <p>12      A   Again, this is company confidential</p> <p>13      information. It's trade secret.</p> <p>14      Q   And do you understand that there's a</p> <p>15      protective order entered in this case, sir, that</p> <p>16      protects trade secret, proprietary, confidential</p> <p>17      information from being disclosed anywhere outside</p> <p>18      this case?</p> <p>19      MR. KELLY: Object to the form.</p> <p>20      BY MR. SIGLER:</p> <p>21      Q   Can you tell me generally what this</p> <p>22      redacted paragraph discusses?</p>

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<p>1       A You know, it speaks about financial 2 consideration of the value of Swarm Patents. 3       Q Okay. So this is a document that was 4 provided by Mr. Fisher to RPX, right? 5       A That is correct. 6       Q And it discusses Swarm's view of the 7 value of its patent portfolio, right? 8       A Correct. 9       Q And it was provided to RPX as part of 10 the discussions between Swarm and RPX about 11 RPX possibly buying Swarm's patents, right? 12      A It was part of our 13 Non-Disclosure Agreement discussion. 14      Q Okay, so that wasn't exactly my 15 question. I just want to clarify. 16      This was provided by Swarm to 17 RPX during the negotiations with RPX about a 18 possible purchase of Swarm's patents, right? 19      A It was provided during the 20 conversations that we interchanged through email. 21      Q Okay. And if we could go back to 22 first page of this exhibit, please, do you see</p>	<p>1       that -- all the communications that we had between 2 RPX and Swarm, we have provided. If there is one, 3 then you should have it. I cannot recall from the 4 top of my head. 5       Q Okay. Do you recall if Mr. -- because 6 I didn't get an email from RPX to Mr. Fisher 7 asking for this information; that's why I'm 8 curious about it. 9       So do you know if Mr. Hanneken asked 10 for this information over the phone to Mr. Fisher? 11      MR. KELLY: Object to the form. 12      THE WITNESS: This is the part that I 13 don't remember. 14      BY MR. SIGLER: 15      Q Okay. All right, looking at this 16 email, the part that's labeled 4, it says "I have 17 attached." Do you see that, sir? 18      A Yes, I see that. 19      Q And Mr. Fisher indicates that he's 20 attached claim charts illustrating the application 21 of claim 1 of the '777 patent and '004 patent to 22 products of Cisco, right?</p>
<p style="text-align: center;">Page 162</p> <p>1       there -- let's go to the email at the bottom, 2 please, and this is an email from Mr. Fisher to 3 Mr. Hanneken at RPX, right? 4       A That is correct. 5       Q All right. And he says that he is 6 sending this email to answer some of the items 7 that RPX requested, right? 8       A That is correct. 9       Q Then he says, quote, "The 'ballpark 10 price guidance,'" end quote, "will follow," right? 11      A Correct. 12      Q And that's referring to the financial 13 consideration information we saw in the attached 14 document, right? 15      A Correct. 16      Q So that's ballpark price guidance to 17 RPX about what Swarm might be willing to sell its 18 patents for, right? 19      A Correct. 20      Q Okay. This email from Mr. Fisher, is 21 he responding to an email from Mr. Hanneken? 22      A I don't know. Everything that we had</p>	<p style="text-align: center;">Page 164</p> <p>1       A That is correct. 2       Q All right. So Mr. Fisher sent 3 Mr. Hanneken at RPX copies of claim charts about 4 Cisco products, right? 5       A That is correct. 6       Q Did Mr. Fisher send -- besides the 7 claim charts and the Question 3 Financial 8 Considerations redacted document, did Mr. Fisher 9 send Mr. Hanneken or RPX any other documents? 10      A As far as I know, this is what he 11 sent. 12      Q All right. And did Mr. Fisher have a 13 phone call with Mr. Hanneken after this? 14      A I know they spoke on the phone. I 15 don't know if that happened before or after, but I 16 know they spoke on the phone. 17      Q Were you on that phone call? 18      A I was not. 19      Q All right. Let's bring up the next 20 exhibit, which will be Tab AA, please, and that 21 will be Exhibit 30, I believe.</p>

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<p>1            (Iniguez Exhibit 30 was marked 2            for identification.) 3            BY MR. SIGLER: 4            Q Do you see, Mr. Íñiguez, this is an 5            email from Mr. Fisher to Mr. Hanneken at RPX? 6            A Yes, I see that. 7            Q And it's dated January 28th, 2020, 8            right, sir? 9            A Yes, I see it. 10          Q It's a couple days after the emails we 11          just looked at, right? 12          A Yes. 13          Q All right. And Mr. Fisher says, 14          "Ryan, it appears, based on our conversation this 15          afternoon, that the discussions between 16          Swarm Technology and RPX have concluded." 17          Do you see that, sir? 18          A Yes, I see that. 19          Q So this indicates that Mr. Fisher and 20          Mr. Hanneken had a conversation on the phone, 21          right? 22          A Yes, I can see that.</p>	<p>1            that Swarm provided RPX? 2            A It's possible that they did. I was 3            not on the conference call, and I don't know the 4            details of the conversation. 5            Q Okay. So you can't say one way or the 6            other whether Mr. Fisher on behalf of Swarm and 7            Mr. Hanneken on behalf of RPX negotiated about a 8            potential price for RPX to buy Swarm's patents? 9            A I'm sure they spoke about that 10          Question No. 3 that you showed before. 11          Q Okay. All right. 12          So just to sum up, Swarm and 13          RPX entered a Non-Disclosure Agreement together, 14          right? 15          A Correct. 16          Q And Swarm sent RPX claim charts, some 17          information in Mr. Fisher's emails, and the 18          document titled "Financial Considerations," right? 19          A That is correct. 20          Q And Swarm and RPX had at least one 21          call to discuss a potential sale of Swarm's 22          patents, right?</p>
<p>1            Page 166</p> <p>1            Q And he indicates that the discussions 2            that Swarm and RPX had been having about a sale of 3            Swarm's patents have concluded, right, sir? 4            A That is correct. 5            Q And he asks for the return of 6            confidential information provided to RPX by Swarm, 7            right? 8            A That is correct. And based on that, 9            I'm assuming that RPX did their portion of the 10          Non-Disclosure Agreement, and they have destroyed 11          those copies. 12          Q Do you know what confidential 13          information he's referring to there? 14          MR. KELLY: Objection to form. 15          THE WITNESS: As indicated in that 16          email, it says "such material." I'm assuming that 17          everything John Fisher provided to RPX. 18          BY MR. SIGLER: 19          Q Do you know -- I may have asked you 20          this already. I apologize if I did. 21          Did Mr. Fisher and Mr. Hanneken 22          discuss on that call the financial information</p>	<p>1            Page 168</p> <p>1            A Correct. 2            Q All right. Has Swarm ever 3            participated in any trade shows, sir? 4            A Yes. 5            Q Which ones? 6            A The first one was IoT World 2017; and 7            then IOT Tech Expo 2017; and again IoT World 2018. 8            Q Okay. And all three of those trade 9            shows were in Santa Clara, California, right? 10          A That is correct. 11          Q And those are the only three trade 12          shows that Swarm has participated in anywhere, 13          right? 14          A I will not say anywhere, because by 15          anywhere, you're referring to trade shows outside 16          California, and there's a trade show outside 17          California that took place in Canada. It's a 18          robotics trade show. It's called the 19          R-I-R-O-S [sic]. IROS is the acronym for the 20          trade show. 21          Q So Swarm also participated in one 22          other trade show, is that right, besides the three</p>

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<p>1       in California?</p> <p>2       A    Correct.</p> <p>3       Q    And that trade show is in Canada,</p> <p>4       right?</p> <p>5       A    Correct.</p> <p>6       Q    Okay. Focusing on the three.</p> <p>7       IOET [sic] -- excuse me, strike that.</p> <p>8           Focusing on the three IoT trade shows</p> <p>9       in Santa Clara, how many days total did Swarm</p> <p>10      participate in those?</p> <p>11      A    Typical trade show is three days.</p> <p>12      That's a typical trade show.</p> <p>13      I would have to go back -- in fact, on</p> <p>14     my website you may be able to see the actual --</p> <p>15     the actual dates for each trade show. It could be</p> <p>16     two days, it could be three days.</p> <p>17      Q    Okay. Looking at one of your</p> <p>18     declarations, I came up with nine total days for</p> <p>19     those trade shows. Does that sound right?</p> <p>20      A    That's about right.</p> <p>21      Q    Okay. And you personally attended</p> <p>22     those three trade shows in Santa Clara on behalf</p>	<p>1       trade shows, and that's -- and, yes, difficulty,</p> <p>2       yes.</p> <p>3       Q    All right. Putting financials aside,</p> <p>4       was it burdensome to travel to those trade shows</p> <p>5       in Santa Clara, California?</p> <p>6       A    Yes. As you may have seen on my pitch</p> <p>7     deck, it says that this is a self-funded company,</p> <p>8     I am bootstrapping -- I am constrained by</p> <p>9     bootstrapping. It says right there. And in that</p> <p>10    sense, I need to take vacation time from my</p> <p>11    employer, use the vacation time in order to go and</p> <p>12    attend those trade shows.</p> <p>13      Q    Well, it was important enough for</p> <p>14    Swarm that you take those steps, right, sir?</p> <p>15      A    Yes.</p> <p>16      Q    All right. Ballpark figure, how much</p> <p>17    total did Swarm spend participating in these three</p> <p>18    trade shows in Santa Clara?</p> <p>19      A    In round numbers, each trade show is</p> <p>20    different, but I would say around \$6,000, that's</p> <p>21    for the floor, and we provided that documentation.</p> <p>22           And then when you add up airplanes,</p>
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<p>1       of Swarm?</p> <p>2       A    Yes, I did.</p> <p>3       Q    How did you get there?</p> <p>4       A    I got there by airplane. And we had</p> <p>5     provided the airplane tickets also on the</p> <p>6     documents that we produced.</p> <p>7       Q    All right. And did you stay in a</p> <p>8     hotel while you were there at those trade shows?</p> <p>9       A    Yes, I did.</p> <p>10      Q    Did you have any difficulty traveling</p> <p>11     to and from those trade shows in Santa Clara?</p> <p>12      A    Difficulty from Arizona to California,</p> <p>13     or from the hotel to the trade show?</p> <p>14      Q    Difficulty traveling from Arizona to</p> <p>15     California.</p> <p>16      A    Well, if you're asking about financial</p> <p>17     difficulty, the answer is yes. We -- this is a</p> <p>18     self-funded company, and we do the best we can in</p> <p>19     order to be able to fund this company.</p> <p>20      In this case, we used miles from</p> <p>21     credit cards, earned miles. We used those the</p> <p>22     best we can, and then we fly into -- into those</p>	<p>1       when you add up also hotel, meals -- I don't have</p> <p>2       the exact number, but we keep track of everything.</p> <p>3       If that is necessary, I can provide up to the last</p> <p>4       cent that we have spent.</p> <p>5       Q    But Swarm spent a significant amount</p> <p>6       of its money attending these trade shows in</p> <p>7       California, right?</p> <p>8       A    If we define "significant" as in using</p> <p>9       my savings, the answer is correct, yes.</p> <p>10      Q    Okay. What percentage of Swarm's</p> <p>11     expenses in 2017 did it spend on going to the two</p> <p>12     trade shows in California?</p> <p>13      MR. KELLY: Object to the form.</p> <p>14      THE WITNESS: A great majority of our</p> <p>15     expenses go into patent prosecution.</p> <p>16           In order to provide you a percentage,</p> <p>17     I would need to ask my wife; she's the one who</p> <p>18     keeps track of all the expenses in the company.</p> <p>19      BY MR. SIGLER:</p> <p>20      Q    Okay, appreciate that. All right.</p> <p>21           So Swarm attended these three trade</p> <p>22     shows in Santa Clara to promote its technology,</p>

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<p>1 right?</p> <p>2 A Correct.</p> <p>3 Q And it also attended these three trade</p> <p>4 shows in Santa Clara to try to get companies to</p> <p>5 license Swarm's patents, right?</p> <p>6 MR. KELLY: Object to the form.</p> <p>7 THE WITNESS: Again, as mentioned in</p> <p>8 my pitch deck, the purpose of going to a trade</p> <p>9 show is to exhibit technology. I went to the</p> <p>10 exhibit part to exhibit technology, and as far as</p> <p>11 the company, the goal is to get funding for the</p> <p>12 technology. That was the main purpose.</p> <p>13 There's also the possibility of</p> <p>14 licensing -- or presenting the opportunity to</p> <p>15 license the patents.</p> <p>16 BY MR. SIGLER:</p> <p>17 Q Okay. So one of the reasons that</p> <p>18 Swarm attended these trade shows in Santa Clara</p> <p>19 was to seek out potential patent licensing</p> <p>20 opportunities, right?</p> <p>21 A One of the reasons. Not the only one.</p> <p>22 As I mentioned, the other one is to get an</p>	<p>1 A Correct. As I mentioned before, we</p> <p>2 want to present the opportunity to -- for</p> <p>3 companies to consider licensing.</p> <p>4 Q And how did Swarm intend to do that?</p> <p>5 A At the trade show?</p> <p>6 Q Yes.</p> <p>7 A Well, the -- by the way, this -- my</p> <p>8 booth, my exhibit, was the most popular exhibit in</p> <p>9 the trade show. And the reason why is because I</p> <p>10 had robots that were working with -- or exhibiting</p> <p>11 swarm intelligence, and I was constantly attending</p> <p>12 people, explaining the architecture.</p> <p>13 That's all we did in the trade show.</p> <p>14 We were explaining the architecture. It was</p> <p>15 either myself or one of my chosen. They took</p> <p>16 turns to help me at the booth. At one point, my</p> <p>17 cousin went over there and helped me out, and we</p> <p>18 were constantly explaining the architecture.</p> <p>19 To answer your question, I was there</p> <p>20 to promote, to exhibit technology, with the hope</p> <p>21 that somebody would invest in the company, or</p> <p>22 perhaps a company would be interested in licensing</p>
<p>1 investor.</p> <p>2 Q Okay. So I think you also mentioned</p> <p>3 one more, so let me try to sum it up.</p> <p>4 The reasons that Swarm attended these</p> <p>5 three trade shows in California was to promote its</p> <p>6 technology, seek out potential patent licensing</p> <p>7 opportunities, and attract potential investors,</p> <p>8 right?</p> <p>9 A Correct.</p> <p>10 Q All right. And, in fact, in one of</p> <p>11 your declarations you say that one of the things</p> <p>12 Swarm wanted to do at these trade shows was</p> <p>13 generate interest among companies to license</p> <p>14 Swarm's patents. Do you recall that, sir?</p> <p>15 MR. KELLY: Object to the form.</p> <p>16 THE WITNESS: Just repeat that. I</p> <p>17 want to make sure that I got it.</p> <p>18 BY MR. SIGLER:</p> <p>19 Q Yeah. So one of the things Swarm</p> <p>20 wanted to do at these trade shows is generate</p> <p>21 interest among companies to license Swarm's</p> <p>22 patents, right?</p>	<p>1 those patents.</p> <p>2 Q So was it a robot or robots?</p> <p>3 I'm sorry.</p> <p>4 A Robots. Robots.</p> <p>5 Q More than one, okay.</p> <p>6 A Yes. We -- we're required to have</p> <p>7 more than one.</p> <p>8 Q Okay.</p> <p>9 A This architecture, it allows you to</p> <p>10 have multiple devices to work collectively with</p> <p>11 collective intelligence.</p> <p>12 Q Okay. And were those robots</p> <p>13 prototypes?</p> <p>14 A Yes.</p> <p>15 Q So at these three trade shows in</p> <p>16 Santa Clara, you displayed prototypes of Swarm's</p> <p>17 products, right?</p> <p>18 A Correct.</p> <p>19 Q All right. And at these trade shows,</p> <p>20 did Swarm ever display a sign stating that its</p> <p>21 patents were available for licensing?</p> <p>22 A Correct.</p>
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<p>1 Q And did Swarm advertise that Swarm is 2 a technology licensing company? 3 MR. KELLY: Object to the form. 4 THE WITNESS: I would have to go back 5 and see the documentation, but as illustrated on 6 my pitch deck, in my business plan, Swarm was 7 seeking to obtain an investor in order to make 8 products in Mesa, Arizona, and the possibility of 9 licensing the patents has always been there. 10 BY MR. SIGLER: 11 Q Okay. And were -- well, strike that. 12 Did you speak to potential investors 13 at these trade shows in Santa Clara? 14 A Some of the people that visited the 15 exhibit were interested, and so the answer is yes. 16 Q Okay. Mr. Fahner, could you please 17 put Tab K on the screen? And we'll mark that as 18 Exhibit 31, please. 19 (Iniguez Exhibit 31 was marked 20 for identification.) 21 BY MR. SIGLER: 22 Q Do you see, Mr. Íñiguez, that this</p>	<p>1 Q And that after these trade shows, 2 Swarm sent out letters seeking potential 3 licensees, correct? 4 A Correct. 5 Q They also sent out some documentation 6 to potential investors, right, sir? 7 A That is correct. 8 Q And that documentation included a 9 confidential pitch deck, confidential business 10 plan, and a confidential executive summary, right? 11 A That is correct. 12 Q And here you identify that those 13 documents were sent to a number of different 14 potential investors that are named here, right? 15 A That is correct. 16 Q All right. And those potential 17 investors are identified here as Andreessen 18 Horowitz, Boming Star Venture Capital, Play 19 Ground Global, Gradient Ventures, Lux Capital, 20 Nexstar Partner, Intel Capital, Khosla Ventures, 21 Jabil, Nvidia Business Development, Samsung Research America, and Peter PC, right, sir?</p>
<p style="text-align: center;">Page 178</p> <p>1 Exhibit 31 is Swarm's answers to Juniper's 2 interrogatories regarding venue and jurisdiction? 3 A Yep, I see that. 4 Q And did you review these interrogatory 5 answers, sir? 6 A Yes, I did. 7 Q And in fact, you verified these 8 answers, right, sir? 9 A Correct. 10 Q All right. Let's go to page 4 of the 11 document, and if we could blow up the part that 12 says "ANSWER," and I want to focus on the 13 paragraph that starts with "Swarm did not 14 undertake." 15 Do you see that paragraph, 16 Mr. Íñiguez? 17 A Yes, I see it. 18 Q Okay. And this talks about -- well, 19 strike that. 20 Swarm affirms here that it attended 21 these three trade shows in California, right? 22 A Correct.</p>	<p style="text-align: center;">Page 180</p> <p>1 A That is correct. 2 Q And were any of those firms or people 3 located in California that received these 4 documents? 5 A It is my understanding that all of 6 them are located in California. 7 Q And so Swarm sent documents to 8 employees of those companies or the individuals 9 listed there in California, right? 10 A Correct. 11 Q All right. And is Jabil the name of a 12 company? 13 A No. I could not find the last name. 14 It's a personal investor, but all I had was the 15 first name. 16 Q All right. And I assume Peter PC is 17 also a private investor? 18 A He is another private investor, 19 correct. 20 Q Did Swarm also communicate at one 21 point with someone named Neil Naveen of Orzota, 22 Inc.?</p>

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<p>1 A Correct.</p> <p>2 Q And who is Mr. Naveen?</p> <p>3 A At the time, he represented a company</p> <p>4 that provided machine learning software, and we</p> <p>5 discussed the possibility of him doing a software</p> <p>6 module in order to detect objects, basically to</p> <p>7 mount a camera on my robots, and then have them --</p> <p>8 have them identify multiple objects.</p> <p>9 We went back and forth on a few</p> <p>10 emails, and he is the person.</p> <p>11 Q Okay. Did you talk to Mr. Naveen at</p> <p>12 all about licensing Swarm's patents?</p> <p>13 A No. He was acting more as the</p> <p>14 provider of a service. In this case, he was</p> <p>15 looking into providing software for my company,</p> <p>16 which never happened.</p> <p>17 Q And you signed a non-disclosure or</p> <p>18 confidentiality agreement with him, is that</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q All right. And did that agreement</p> <p>22 state where any disputes under it would be heard?</p>	<p>1 Q Okay. We've been going about an hour.</p> <p>2 Why don't we take another break, if that's</p> <p>3 all right with you, Mr. Íñiguez.</p> <p>4 MR. KELLY: Thank you.</p> <p>5 THE VIDEOGRAPHER: Okay, we are going</p> <p>6 off the record. The time is 1:35.</p> <p>7 (A break was taken.)</p> <p>8 THE VIDEOGRAPHER: We are back on the</p> <p>9 record. The time is 1:50.</p> <p>10 MR. KELLY: I'm trying hard to be</p> <p>11 respectful of the Court's order to not interpose</p> <p>12 objections, but I did want to designate -- or did</p> <p>13 want to mention on the record that your</p> <p>14 questions -- your earlier questions regarding</p> <p>15 Swarm's proprietary and trade secret information,</p> <p>16 we believe that -- and I allowed you some -- some</p> <p>17 good faith leeway, but for that reason, we didn't</p> <p>18 object on the record, but we believe that subject</p> <p>19 matter is beyond the scope of the jurisdictional</p> <p>20 discovery that the parties have previously agreed</p> <p>21 to in writing.</p> <p>22 We don't need to argue about that, but</p>
<p>1 A I don't -- I would have to look into</p> <p>2 the document. I do not know the answer.</p> <p>3 Q Okay. Well, I would show you the</p> <p>4 document, but it was provided to me, but all of it</p> <p>5 redacted out. We'll circle back to that at the</p> <p>6 end.</p> <p>7 Did the documents that you sent to</p> <p>8 these potential investors discuss Swarm's patents?</p> <p>9 A The documents that we provided --</p> <p>10 for example, the pitch deck -- mentions that Swarm</p> <p>11 has patents, as well as the business plan and the</p> <p>12 executive summary. So those documents mention</p> <p>13 those patents.</p> <p>14 Q Do they talk about Swarm's efforts to</p> <p>15 license its patents?</p> <p>16 A If you look into the business plan, it</p> <p>17 says that it has multiple sources of revenue, and</p> <p>18 one of these sources of revenue would be to</p> <p>19 eventually license those patents.</p> <p>20 Sadly, it never happened, and a source</p> <p>21 of revenue never became a reality -- or has not</p> <p>22 become a reality.</p>	<p>1 I wanted to lay that on the record.</p> <p>2 MR. SIGLER: Understood, thank you.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q All right, Mr. Íñiguez, let's talk</p> <p>5 about some of these documents that were sent to</p> <p>6 potential investors.</p> <p>7 Can we please put Tab DD on the</p> <p>8 screen? And if you could let me know what exhibit</p> <p>9 number that should be, Mr. Fahnert, that would be</p> <p>10 great?</p> <p>11 THE VIDEOGRAPHER: DD will be 32.</p> <p>12 MR. KELLY: Thank you.</p> <p>13 (Iniguez Exhibit 32 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Mr. Íñiguez, do you have Exhibit 32 on</p> <p>17 the screen there in front of you?</p> <p>18 A Yes.</p> <p>19 Q And the front cover of this document</p> <p>20 says Swarm Technology Business Plan, right?</p> <p>21 A Correct.</p> <p>22 Q And is this one of the documents that</p>
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<p>1 you sent to potential investors in California?</p> <p>2 A Yes. Not all of them got this</p> <p>3 document. Some got pitch deck, and/or executive</p> <p>4 summary, and/or business plan.</p> <p>5 Q Understood. Did you write this</p> <p>6 document, sir?</p> <p>7 A Yes, I did.</p> <p>8 Q Did anyone else participate in the</p> <p>9 writing of this document?</p> <p>10 A No.</p> <p>11 Q And I couldn't find a date in this</p> <p>12 document. Do you know what the date of this</p> <p>13 document is?</p> <p>14 A I don't have -- it looks like there's</p> <p>15 a year there, 2017 on the top.</p> <p>16 Q Oh, yeah. Thank you for that. My</p> <p>17 printed version I'm looking at did not print that</p> <p>18 part, so I appreciate that. All right.</p> <p>19 So it appears that this Business Plan</p> <p>20 is dated 2017, right, sir?</p> <p>21 A Correct.</p> <p>22 Q All right. What was the purpose of</p>	<p>1 Q And the other two streams are</p> <p>2 licensing our intellectual property, right?</p> <p>3 A Correct.</p> <p>4 Q So two of the three revenue streams</p> <p>5 making up the revenue model for Swarm Technology</p> <p>6 relate to licensing Swarm's intellectual property,</p> <p>7 right?</p> <p>8 A Yes.</p> <p>9 Q All right. Please take us to page 14</p> <p>10 of this document.</p> <p>11 All right, Mr. Íñiguez, there's a part</p> <p>12 in the middle there under the second redacted</p> <p>13 block that says "Strategy to break into this</p> <p>14 market." Do you see that?</p> <p>15 A Yes, I see it.</p> <p>16 Q What market is this referring to?</p> <p>17 MR. KELLY: Object to the form.</p> <p>18 THE WITNESS: The first one, letter A,</p> <p>19 is talking about intent-based networks. Exhibit</p> <p>20 or letter B is talking about the IoT market in</p> <p>21 general -- well, essentially those three other --</p> <p>22 B, C and D are talking about IoT in general.</p>
<p style="text-align: center;">Page 186</p> <p>1 this document?</p> <p>2 A The purpose of the Business Plan was</p> <p>3 to describe the business.</p> <p>4 Q Okay. And in the limited time I have</p> <p>5 left, Mr. Fahner, can you take us to the tenth</p> <p>6 page of this document, please? It's got a</p> <p>7 Bates stamp ending in 314. All right.</p> <p>8 And here you see, Mr. Íñiguez, the</p> <p>9 version of this document I received has some</p> <p>10 information that's been redacted?</p> <p>11 A Yes.</p> <p>12 Q Okay. And there's a section there on</p> <p>13 page 10 that says "Revenue Model."</p> <p>14 Do you see that?</p> <p>15 A Correct.</p> <p>16 Q And it says, "The revenue model for</p> <p>17 Swarm Technology is comprised of three streams,"</p> <p>18 right?</p> <p>19 A Correct.</p> <p>20 Q All right. And one of those streams</p> <p>21 is consulting fees, right?</p> <p>22 A Correct.</p>	<p style="text-align: center;">Page 188</p> <p>1 BY MR. SIGLER:</p> <p>2 Q Okay. Actually, could you remove the</p> <p>3 blowup, please? It says at the top, "Why is</p> <p>4 intent-based network significant?"</p> <p>5 Do you see that, sir?</p> <p>6 A Yes. Could you make it bigger? Good.</p> <p>7 Q It's difficult for me because the</p> <p>8 document is redacted, so I'm just trying to figure</p> <p>9 out where it says "Strategy to break into this --</p> <p>10 market," what does "this market" refer to? Is it</p> <p>11 referring to intent-based network?</p> <p>12 A Yes. Can you zoom back on "Why is</p> <p>13 intent-based network significant?" I'm trying to</p> <p>14 get context to answer your question.</p> <p>15 Yeah, this is a beautiful quote from</p> <p>16 the patent. And why do I say "beautiful"? It's</p> <p>17 because this is the essence of the invention.</p> <p>18 I broke away from every computer</p> <p>19 architecture that had existed in the history of</p> <p>20 the world, and I said, from now on, the CPU here,</p> <p>21 or the solar, is going to have intentions to send</p> <p>22 there. That's a quote, "intended."</p>

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<p>1        And then you have the processing      2        units, autonomous units, to fill in that      3        intention, and this is why I am the person who      4        invented what is known today as intent-based      5        proactive autonomous networks.</p> <p>6        Q    Okay. What does "this market" refer      7        to?</p> <p>8        A    I created a new field, which is      9        basically what I just mentioned, having a computer      10      network to execute an intention. And in order to      11      break into that market, I needed to go into those      12      conferences or exhibits or trade shows to exhibit      13      my groundbreaking new technology.</p> <p>14      Q    Okay. So one of the things you wanted      15      to do to break into this market was exhibit at      16      these three trade shows in California, right?</p> <p>17      A    Correct.</p> <p>18      Q    And the other thing you said that      19      Swarm was going to do was contact Apstra, right?</p> <p>20      A    Correct.</p> <p>21      Q    And Apstra is a company in California,      22      and you understand they're one of the plaintiffs</p>	<p>1        A    I wrote that document.</p> <p>2        Q    Okay. And if we could go to page 9 of      3        the document. It ends in 1331. And here, sir,      4        there's a discussion of the '777 patent, right?</p> <p>5        A    Correct.</p> <p>6        Q    As well as the '850 patent      7        application, right?</p> <p>8        A    Correct.</p> <p>9        Q    And so Swarm identified that patent      10      and that application to potential investors,      11      right?</p> <p>12      A    Yes, correct.</p> <p>13      Q    Okay. Let's go to page 15, please,      14      that ends in 1337. Okay.</p> <p>15      This slide is entitled "Funding,"      16      right, sir?</p> <p>17      A    Correct.</p> <p>18      Q    And the second to last sentence of      19      this slide says, "As an innovation company, we      20      will continue to grow our patent portfolio in the      21      field of distributed artificial intelligence."</p> <p>22      Do you see that, sir?</p>
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<p>1        in this case, right?</p> <p>2        A    Correct.</p> <p>3        Q    All right. And what did you intend to      4        contact Apstra about?</p> <p>5        A    We have reviewed that documentation.      6        We sent a letter to Apstra presenting a business      7        opportunity, and as you showed before, we sent      8        three letters, and we got no response.</p> <p>9        Q    And those letters to Apstra offered an      10      opportunity to license Swarm's patents, right?</p> <p>11      A    Correct.</p> <p>12      Q    All right. You can put that document      13      aside, and let's mark Exhibit 33. It will be      14      Tab EE.</p> <p>15      (Iníguez Exhibit 33 was marked      16      for identification.)</p> <p>17      BY MR. SIGLER:</p> <p>18      Q    Mr. Íñiguez, is this one of the      19      documents that you sent to potential investors      20      about Swarm?</p> <p>21      A    Correct, that is the pitch deck.</p> <p>22      Q    And did you write this document, sir?</p>	<p>1        A    Yes, I see it.</p> <p>2        Q    And then it says, "To accelerate the      3        speed of development," and then the rest of it is      4        redacted. Do you see that, sir?</p> <p>5        A    Correct.</p> <p>6        Q    Can you tell me generally what is      7        redacted there?</p> <p>8        MR. KELLY: Objection to the form of      9        the question. And this is another instance where      10      I'd like to state for the record specifically that      11      this is beyond the scope of the jurisdictional      12      discovery that the parties previously agreed to in      13      writing, and that's why we redacted it. I think      14      to ask the witness about it right now would defeat      15      the purpose of redacting.</p> <p>16      And I know we don't agree about the      17      propriety of redacting, but let's take that up in      18      motion practice as opposed to with this witness.</p> <p>19      MR. SIGLER: All right. And I think      20      you're seeing here in the real time the extreme      21      difficulty the redaction process is putting on me      22      to try to get testimony on these documents.</p>

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<p>1        All right, and of course, that      2        redacted piece right there follows up a discussion      3        on the patent portfolio, so I don't have a clue      4        how it's not relevant.</p> <p>5        Okay, we can put that document to the      6        side.</p> <p>7        MR. KELLY: For the record, I didn't      8        say it wasn't relevant, sir. I said it was beyond      9        the scope of the discovery that the parties      10      previously agreed to in writing.</p> <p>11        MR. SIGLER: Yeah. Well, that's what      12      I meant, it's not beyond that scope, it doesn't      13      appear, but regardless, let's go -- let's put that      14      one aside. Let's go to Tab FF, please, which will      15      be Exhibit 34.</p> <p>16        (Iniguez Exhibit 34 was marked      17        for identification.)</p> <p>18        BY MR. SIGLER:</p> <p>19        Q    Is this one of the documents that you      20      sent to potential investors, Mr. Íñiguez?</p> <p>21        A    Correct.</p> <p>22        Q    And what document is this?</p>	<p>1        And Mr. Íñiguez, here you show the      2        '777 patent again, right, sir?</p> <p>3        A    Correct.</p> <p>4        Q    And the 850 patent application, right,      5        sir?</p> <p>6        A    Correct.</p> <p>7        Q    All right. And it says at the top of      8        this slide, "Our IP gives us the right to exclude      9        others from monetizing our technology until 2033."</p> <p>10        Do you see that, sir?</p> <p>11        A    Yes, I see.</p> <p>12        Q    What did you mean by "exclude others"?</p> <p>13        MR. KELLY: Object to the form.</p> <p>14        THE WITNESS: I'm basically      15      paraphrasing the Constitution of the      16      United States, Article 1, Section 8. As inventor,      17      I have rights granted by the government for a      18      limited time, and that's what I'm saying over      19      there.</p> <p>20        BY MR. SIGLER:</p> <p>21        Q    Okay. So the patents give you the      22      right to prevent others from monetizing that</p>
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<p>1        A    This is a pitch deck.</p> <p>2        Q    All right. And Exhibit 33 was also a      3        pitch deck.</p> <p>4        Is one of these earlier than the      5        other?</p> <p>6        A    This one is earlier than the other.</p> <p>7        The reason why I changed it is because      8        I got the feedback from people saying that they      9        got confused about the ants on those pictures, so      10      I went from the ants into a robot.</p> <p>11        I don't know if that was a good      12      decision or not, but that was the purpose of the      13      change.</p> <p>14        Q    Okay. Would this pitch deck have been      15      sent to investors in 2017?</p> <p>16        A    Yes, it was sent to some potential      17      investors.</p> <p>18        Q    Okay. And did you draft this      19      document, sir?</p> <p>20        A    I did.</p> <p>21        Q    All right. Let's go to page 14,      22      please. It ends in 1352.</p>	<p>1        technology? Is that what you're saying?</p> <p>2        A    What I'm saying is the Constitution      3        grants me, for a limited time, rights to my own      4        discoveries as an inventor, and basically that's      5        what I'm saying right here.</p> <p>6        Q    Okay. Let's go to page 15, please,      7        the next page. It says, "Risks. Our intellectual      8        property plays in the field of gigantic      9        competitors." Do you see that, sir?</p> <p>10        A    Yes, I see it.</p> <p>11        Q    And I assume, sir, that the portion      12      that's redacted there is the names of Swarm's      13      competitors; is that right?</p> <p>14        A    Correct. And it's not hard to see how      15      those competitors are gigantic compared to my      16      company that I'm building out of the kitchen in my      17      house.</p> <p>18        Q    Is Juniper identified there as a      19      competitor?</p> <p>20        MR. KELLY: Object to the form of the      21      question. And to the extent it's beyond the scope      22      of the deposition, it's an improper question</p>

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<p>1 entirely.</p> <p>2 THE WITNESS: Correct, it's beyond the</p> <p>3 scope, and I don't remember.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Is Apstra identified as a competitor</p> <p>6 in there?</p> <p>7 MR. KELLY: Same objection, same</p> <p>8 instruction.</p> <p>9 THE WITNESS: That would be, again,</p> <p>10 trade secret.</p> <p>11 BY MR. SIGLER:</p> <p>12 Q Well, under that there's a discussion</p> <p>13 about litigation, right, sir?</p> <p>14 A Are you referring to -- can you point</p> <p>15 me to what you have in mind?</p> <p>16 Q Sure. You wrote there that "Should</p> <p>17 [these] competitors decide to circumvent Swarm's</p> <p>18 IP, they count with ample funding and unlimited</p> <p>19 legal resources. To quote Xerxes, their, 'Arrows</p> <p>20 will block out the sun."</p> <p>21 That's what you wrote, right?</p> <p>22 A I didn't write the quote. I read the</p>	<p>1 right?</p> <p>2 A I was represented by Mr. Kelly, but</p> <p>3 again, he was not litigating for Swarm.</p> <p>4 Q And then you quote Leonidas, "Then we</p> <p>5 shall have our battle in the shade!" right?</p> <p>6 A Correct.</p> <p>7 Q What's the battle you're referring to?</p> <p>8 MR. KELLY: Object to the form.</p> <p>9 THE WITNESS: Can you repeat? Are you</p> <p>10 asking -- could you repeat the question, please?</p> <p>11 BY MR. SIGLER:</p> <p>12 Q What is the battle you're referring to</p> <p>13 there in that quote?</p> <p>14 A I don't know. That quote corresponds</p> <p>15 to the one on top. It follows from the top.</p> <p>16 Q Right. And the one at the top talks</p> <p>17 about competitors circumventing your IP, right?</p> <p>18 A Again, Mr. Kelly was not representing</p> <p>19 Swarm as a litigator. He was practicing patent</p> <p>20 law, prosecuting patents at the patent office.</p> <p>21 Q Is he representing Swarm as a</p> <p>22 litigator right now?</p>
<p style="text-align: center;">Page 198</p> <p>1 quote, and I put it in there.</p> <p>2 Q And then you say to potential</p> <p>3 investors that Swarm's represented by Mr. Kelly,</p> <p>4 right?</p> <p>5 A Correct.</p> <p>6 Q So you tell investors in 2017 that you</p> <p>7 have a lawyer representing you, right?</p> <p>8 A Correct, on the record.</p> <p>9 Q And then you quote Leonidis, "Then we</p> <p>10 shall have our battle in the shade!" right?</p> <p>11 A I'd like to continue with my --</p> <p>12 MR. KELLY: He was finishing his</p> <p>13 answer. You inadvertently cut him off.</p> <p>14 MR. SIGLER: Oh, I'm sorry, I didn't</p> <p>15 hear. Go ahead, sir.</p> <p>16 THE WITNESS: At that time, Michael</p> <p>17 Kelly was my patent attorney. He was prosecuting</p> <p>18 patents with the United States Patent Office. He</p> <p>19 was not a litigating attorney for Swarm.</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Okay, but you told potential investors</p> <p>22 in 2017 that you were represented by Mr. Kelly,</p>	<p style="text-align: center;">Page 200</p> <p>1 A Yes, and this is a consequence of</p> <p>2 Juniper's lawsuit against Swarm, by the way.</p> <p>3 Before I received this lawsuit from</p> <p>4 Juniper, I did not have legal representation in</p> <p>5 order to wage a battle in court.</p> <p>6 Q Why are you telling investors in 2017</p> <p>7 that you had an attorney and you were ready to</p> <p>8 have a battle?</p> <p>9 MR. KELLY: Object to the form.</p> <p>10 THE WITNESS: Basically what I'm</p> <p>11 saying there is that I got the best possible</p> <p>12 patent attorney in the world, and his name is</p> <p>13 Michael K. Kelly.</p> <p>14 BY MR. SIGLER:</p> <p>15 Q All right, we can take that document</p> <p>16 down. Let's move on to Tab GG, please, and that</p> <p>17 will be, I believe, Exhibit 35.</p> <p>18 (Iniguez Exhibit 35 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. SIGLER:</p> <p>21 Q Mr. Íñiguez, is this one of the</p> <p>22 documents you sent to potential investors?</p>

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1	A Correct.	A Yes.
2	Q Did you write this document?	Q And you're enclosing a copy of the
3	A I did.	pitch deck, right?
4	Q All right. And this is the executive	A Correct.
5	summary that you referred to as being sent to	Q And it's addressed to someone with a
6	potential investors, right?	google.com address, do you see that?
7	A Yes, and this is a copy -- basically a	A Correct.
8	reduced version of the business plan, and what you	And I need to elaborate on this. I
9	see there is also included in the business plan.	mentioned before this morning that this person
10	Q All right. Those are all the	represents Global Ventures, which I met this
11	questions I had on that document.	person at a trade show, and he provided interest
12	Do you recall speaking to someone from	to invest in Swarm. I provided that information,
13	NVIDIA at the 2018 IoT World trade show?	and he gave me a Google email address.
14	A Yes. The person -- just go ahead.	And if you look -- if you search for
15	Q Go ahead, you were saying something.	this person on LinkedIn, you're going to see that
16	A Yeah, the person represents a	he is the funder of Global Ventures, and for some
17	development branch from NVIDIA.	reason, he gave me this google.com email.
18	Q Okay. And did you send that person	Q Okay, thank you for that
19	from NVIDIA the pitch deck after the IoT world	clarification, sir. We can take that document
20	trade show in 2018?	down, and let's move on.
21	A Yes, and that is included on the list	Are you familiar with Samsung Research
22	that we have provided.	America?
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1	Q Okay. And did you also send the pitch	A Yes, I am.
2	deck and executive summary to someone at Intel in	Q And they're located in Northern
3	2017?	California, right?
4	A For the record, it's Intel Capital.	A Correct.
5	This is an investment firm branch from Intel.	Q And did Swarm ever talk to them about
6	Q Okay. But it's part of Intel, right?	Swarm's patents?
7	A I don't know the internal structure,	A We had a discussion -- you saw a
8	but all I know is that it is Intel Capital.	document for this conversation, or should I go
9	Q Okay. And we saw earlier that you	ahead and tell you? Do you have a document to
10	sent NVIDIA and Intel letters in 2018 about	show?
11	licensing Swarm's patents, right?	Q Please go ahead, if you can answer my
12	A Correct.	question.
13	MR. SIGLER: Please, Mr. Fahner,	A We -- this person -- these people --
14	please call up Tab JJ, and that will be	person came to my booth, to my exhibit, and I
15	Exhibit 36.	quote, he said, "I'm very impressed with what you
16	(Iniguez Exhibit 36 was marked	have. I would like to see the opportunity to
17	for identification.)	translate this into a product."
18	BY MR. SIGLER:	Then we signed an NDA, and we had
19	Q Mr. Íñiguez, do you see Exhibit 36 is	conversations about how to translate that into a
20	an email dated October 17, 2017?	product. That never happened. We never executed
21	A Yes.	on that idea, but that was the nature of the
22	Q And it's from you, right?	conversation.

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<p>1 Q Okay. And do you recall sending 2 emails to -- well, strike that. 3 Was that person named Tom Kim from 4 Samsung? 5 MR. KELLY: Object to the form. 6 THE WITNESS: Perfect. 7 BY MR. SIGLER: 8 Q And do you recall sending him some 9 emails that reference Swarm's patents? 10 A I don't recall that off the top of my 11 memory. I would have to go back to the documents 12 to refresh my memory. 13 Q Okay. And you mentioned that you 14 signed an NDA with Samsung Research America, 15 right? 16 A Correct. 17 Q Okay. And did that NDA state where -- 18 well, strike that. 19 Does that NDA state a location or a 20 court where any disputes under that agreement will 21 be litigated? 22 MR. KELLY: Objection, form.</p>	<p>1 Q And you signed it on April 19th, 2021, 2 right? 3 A Correct. 4 Q All right. And do you recall you 5 signed this under the penalty of perjury under the 6 laws of the United States? 7 A Correct. 8 Q Okay, let's go to page 2 of this 9 document, please, and let's take a look at 10 paragraph 10. 11 And here, Mr. Íñiguez, you state under 12 oath that Swarm has sent licensing letters to 13 various companies in a number of other states 14 besides California, right? 15 A Correct. 16 Q Who are those other companies? 17 MR. KELLY: Object to the form. 18 THE WITNESS: You have that 19 information in the documents. 20 BY MR. SIGLER: 21 Q I don't have that information. 22 A Yes. In the documents that we</p>
<p style="text-align: center;">Page 206</p> <p>1 THE WITNESS: I don't recall. I would 2 have to go back to the document to see what -- to 3 see -- to read what it says. 4 BY MR. SIGLER: 5 Q Okay. Yeah, I'd like to see that too. 6 Let's go on to -- let's take a look at 7 your declaration. Mr. Fahnert, please call up 8 Tab RR, and that will be Exhibit 37, is that 9 right? 10 THE VIDEOGRAPHER: Correct, 37. 11 (Iniguez Exhibit 37 was marked 12 for identification.) 13 BY MR. SIGLER: 14 Q Mr. Íñiguez, do you recognize this as 15 an amended declaration that you provided in this 16 case? 17 A Yes. 18 Q All right. And if we could please go 19 to the last page of this declaration. 20 Is that your signature there, 21 Mr. Íñiguez? 22 A Correct.</p>	<p style="text-align: center;">Page 208</p> <p>1 produced, you have all the letters that we sent to 2 any company within or outside California. 3 Q Okay. Yeah, I'm asking you because I 4 don't have the letters outside of California, but 5 maybe they don't exist. 6 Okay, so sitting here today, you can't 7 tell me the various companies in other states 8 besides California that Swarm sent licensing 9 letters to? 10 A I don't have the list on the top of my 11 head. You showed me before a document that 12 contains a list of companies, but that's all I can 13 remember at this point. 14 Q Okay. Did Swarm send claim charts to 15 any companies outside of California? 16 MR. KELLY: Object to the form. 17 THE WITNESS: There is one company 18 outside California. 19 BY MR. SIGLER: 20 Q Who's that? 21 A Microsoft. 22 Q So there's one company outside --</p>

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<p>1 strike that.</p> <p>2 Microsoft is the only company outside</p> <p>3 California that Swarm has sent claim charts to</p> <p>4 that map their products to Swarm's patents, right?</p> <p>5 MR. KELLY: Object to the form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. SIGLER:</p> <p>8 Q All right. Has Swarm ever relied on</p> <p>9 letters it's written to a company to claim that</p> <p>10 company has willfully infringed its patents?</p> <p>11 MR. KELLY: Objection, form.</p> <p>12 THE WITNESS: Basically the letter is</p> <p>13 the same that you have shown me before offering a</p> <p>14 licensing opportunity.</p> <p>15 BY MR. SIGLER:</p> <p>16 Q Okay. And in the Amazon case,</p> <p>17 for example, Swarm relies on that same July 16,</p> <p>18 2018, letter to argue that Amazon was on notice of</p> <p>19 Swarm's patents, right?</p> <p>20 MR. KELLY: Objection to form of the</p> <p>21 question, and instruct the witness not to answer</p> <p>22 to the extent doing so would reveal the</p>	<p>1 THE WITNESS: If judicial is within</p> <p>2 the court, then extra-judicial would be outside</p> <p>3 the court. That would be my understanding.</p> <p>4 BY MR. SIGLER:</p> <p>5 Q Okay. So anything outside of court,</p> <p>6 to your understanding, would be extra-judicial,</p> <p>7 right?</p> <p>8 MR. KELLY: Object to the form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 BY MR. SIGLER:</p> <p>11 Q And paragraph 13 you say, "Swarm has</p> <p>12 never sent a cease and desist letter to anyone."</p> <p>13 Do you see that, sir?</p> <p>14 A That is correct.</p> <p>15 Q What's a cease and desist letter?</p> <p>16 MR. KELLY: Object to the form.</p> <p>17 THE WITNESS: I'm sure there's a legal</p> <p>18 definition for that.</p> <p>19 BY MR. SIGLER:</p> <p>20 Q What's your definition of it?</p> <p>21 This is your declaration, right?</p> <p>22 A That would when to say a company,</p>
<p>1 substance of attorney-client privileged</p> <p>2 communication.</p> <p>3 BY MR. SIGLER:</p> <p>4 Q Can you answer the question, sir?</p> <p>5 A That information is public</p> <p>6 information. I don't have the entire Complaint</p> <p>7 against Amazon. It's a large document.</p> <p>8 Q All right. Well, I can just take a</p> <p>9 look at that myself and include it in our</p> <p>10 briefing.</p> <p>11 Let's go to paragraph 12 of the</p> <p>12 declaration, please. And you state here, "None of</p> <p>13 Swarm's communications with Juniper (or anyone</p> <p>14 else) — whether written or oral — included any</p> <p>15 demand or deadline, nor did Swarm threaten any</p> <p>16 judicial or extra-judicial enforcement action of</p> <p>17 any kind whatsoever."</p> <p>18 Did I read that correctly, sir?</p> <p>19 A Yes.</p> <p>20 Q What is an extra-judicial enforcement</p> <p>21 action?</p> <p>22 MR. KELLY: Object to the form.</p>	<p>1 you're not allowed -- to make a demand,</p> <p>2 essentially, saying you're not allowed to use my</p> <p>3 patents in your products, which I have never done.</p> <p>4 I have never sent a cease and desist</p> <p>5 letter to anyone, inside California or outside</p> <p>6 California.</p> <p>7 Q All right. Well, I'm up against my</p> <p>8 time limit. Mr. Íñiguez, I appreciate your time</p> <p>9 today. I know your counsel had stated that he may</p> <p>10 have some questions for you.</p> <p>11 Before we get to that, I just wanted</p> <p>12 to state on the record that we continue to believe</p> <p>13 that we're entitled to unredacted versions of the</p> <p>14 business documents we looked at. I don't think</p> <p>15 there's any basis to have those withheld, given</p> <p>16 that there's a protective order here, and our</p> <p>17 examination and investigation here has been</p> <p>18 impeded because of those redactions.</p> <p>19 Similarly, we believe we're entitled</p> <p>20 to the unredacted version of the Financial</p> <p>21 Considerations document that was given from Swarm</p> <p>22 to RPX. We believe that's relevant here to the</p>

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<p>1 venue issue. We don't know what is contained in      2 that document and have no way of examining      3 Mr. Íñiguez on it effectively without having it.</p> <p>4 And we also continue to believe we're      5 entitled to the NDA agreements with Mr. Naveen and      6 Samsung Research America for multiple reasons,      7 including whether those contain form selection      8 clauses like the ones that -- excuse me, like the      9 one Swarm agreed to with RPX.</p> <p>10 Therefore, we're going to hold the      11 30(b)(6) portion of this deposition open and      12 reserve our right to continue seeking that      13 information, including in our response brief to      14 the Court. And with that, I pass the witness.</p> <p>15 MR. KELLY: Can we take 10? Can we      16 take 10 minutes, please? We'll resume in 10? Off      17 the record?</p> <p>18 MR. SIGLER: Okay.</p> <p>19 THE VIDEOGRAPHER: Okay, going off the      20 record. The time is 2:26.</p> <p>21 (A break was taken.)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p>	<p>1 Did you regard your communications      2 with Mr. Fisher as attorney-client privileged      3 communications?</p> <p>4 A Yes.</p> <p>5 MR. KELLY: Objection, form.</p> <p>6 BY MR. KELLY:</p> <p>7 Q Did you ever accuse Juniper of      8 infringement?</p> <p>9 A No.</p> <p>10 Q Apstra?</p> <p>11 A No.</p> <p>12 Q Did you ever threaten Juniper or      13 Apstra with litigation?</p> <p>14 A No.</p> <p>15 MR. SIGLER: Objection, form.</p> <p>16 BY MR. KELLY:</p> <p>17 Q Did you ever send -- did you ever send      18 Juniper -- did you ever threaten litigation      19 against Juniper?</p> <p>20 A No.</p> <p>21 Q Did you ever threaten litigation      22 against Apstra?</p>
<p style="text-align: center;">Page 214</p> <p>1 record. The time is 2:47.</p> <p>2 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>3 BY MR. KELLY:</p> <p>4 Q Mr. Íñiguez, I'd like to just go      5 through and clarify a few of the previous answers      6 that you gave to Mr. Sigler earlier in this      7 deposition.</p> <p>8 Earlier he asked you if you spoke with      9 John Fisher when you were preparing for this      10 deposition, and you did not speak with      11 John Fisher, correct?</p> <p>12 A I did not.</p> <p>13 Q Did you review the declarations that      14 John Fisher had submitted in this litigation?</p> <p>15 A I did.</p> <p>16 Q Okay. Do you have an understanding      17 what a patent troll is?</p> <p>18 A Yes.</p> <p>19 Q Are you a patent troll?</p> <p>20 A No.</p> <p>21 Q You characterized John Fisher as a      22 patent agent, which he is.</p>	<p style="text-align: center;">Page 216</p> <p>1 A No.</p> <p>2 Q Did you ever send Juniper a demand      3 letter?</p> <p>4 A No.</p> <p>5 Q Did you ever send Apstra a demand      6 letter?</p> <p>7 A No.</p> <p>8 Q Did you ever send Juniper a cease and      9 desist letter?</p> <p>10 A No.</p> <p>11 Q Did you ever send Apstra a cease and      12 desist letter?</p> <p>13 A No.</p> <p>14 Q Did you ever send a Draft Complaint to      15 Juniper?</p> <p>16 A No.</p> <p>17 Q Did you ever send a Draft Complaint to      18 Apstra?</p> <p>19 A No.</p> <p>20 Q In your testimony you stated that      21 Swarm had sent Juniper and Phi Robotics draft      22 patent license agreements; is that correct?</p>

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<p>1 A Correct.</p> <p>2 Q Where is Phi Robotics located?</p> <p>3 A Mumbai, India.</p> <p>4 Q Do they have a presence in Northern California?</p> <p>5 A They don't.</p> <p>6 Q Do they have a presence in the United States anywhere?</p> <p>7 A They don't.</p> <p>8 Q Other than Juniper and Mumbai -- I'm sorry, Juniper and Phi Robotics, is there anyone else that received a draft patent license agreement from you, Mr. Fisher, Swarm, or your counsel?</p> <p>9 A No.</p> <p>10 Q Can we pull up Exhibit 16 for a moment, please. Can you blow it up?</p> <p>11 So earlier you testified that Mr. Fisher, on your behalf, on Swarm's behalf, sent claim charts to Mr. Saunders at Juniper, correct?</p> <p>12 A Correct.</p>	<p>1 Q And I believe you earlier testified that you weren't sure who drafted it, but that you thought maybe your patent attorney at the time, Michael Kelly -- that's me -- drafted it?</p> <p>2 A Correct.</p> <p>3 Q Okay. Have you had a chance to think about that since then?</p> <p>4 A Yes.</p> <p>5 Q And as you're looking at that document now when you're reading the language, who do you think drafted that document?</p> <p>6 A I believe it was Mr. Fisher who drafted the document.</p> <p>7 Q And is that because the language that you see there is more reflective of Mr. Fisher's style?</p> <p>8 A Correct.</p> <p>9 MR. SIGLER: Objection, leading.</p> <p>10 BY MR. KELLY:</p> <p>11 Q Exhibit 17, can we pull up the November 6, 2019, email from Fisher to Saunders? And specifically, I'm looking for the reference to</p>
<p>1 Q Did you do that to provoke litigation with Juniper?</p> <p>2 A No.</p> <p>3 MR. SIGLER: Objection, form.</p> <p>4 BY MR. KELLY:</p> <p>5 Q Isn't it true that you made strategic decisions and affirmatively avoided provoking litigation with Juniper or anyone else?</p> <p>6 A Correct.</p> <p>7 MR. SIGLER: Objection to form.</p> <p>8 THE WITNESS: Correct.</p> <p>9 BY MR. KELLY:</p> <p>10 Q Okay. Exhibit 16, is there a page 5, Bates 282, we can scroll to? Yeah, that's it.</p> <p>11 You might blow it up a little bit so Mr. Íñiguez can refresh his recollection.</p> <p>12 Do you remember seeing that document earlier today in your deposition?</p> <p>13 A Yes, I have.</p> <p>14 Q I believe it was characterized as a Draft Patent License Agreement.</p> <p>15 A Correct.</p>	<p>1 the Markman hearing, so either scroll down or go -- I believe that's where the reference to the Markman hearing was.</p> <p>2 MS. JONES: Second paragraph.</p> <p>3 THE VIDEOGRAPHER: You need to direct me. I don't know where that's at.</p> <p>4 THE REPORTER: Billy, it's the last sentence of the second paragraph.</p> <p>5 MR. KELLY: Yeah, enlarge that entire second paragraph, please. Yes, thank you.</p> <p>6 BY MR. KELLY:</p> <p>7 Q So in paragraph 2 of this email from John Fisher to Dave Saunders, dated November 6, 2019, 2:44 p.m., it says, "In past communications, Swarm has answered all of your questions concerning the '004 claim chart. Having answered all of your questions, it appears that you have failed to express any position that would prevail in a Markman hearing."</p> <p>8 Do you see that language?</p> <p>9 A Yes.</p> <p>10 Q And John Fisher sent that language</p>

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<p>1 with your authorization, correct?</p> <p>2 A Correct.</p> <p>3 Q Did you intend that to be a veiled</p> <p>4 threat of suit?</p> <p>5 A No.</p> <p>6 MR. SIGLER: Objection, leading.</p> <p>7 THE WITNESS: No. It has never been</p> <p>8 my intention to sue anyone.</p> <p>9 BY MR. KELLY:</p> <p>10 Q So the reference to the Markman</p> <p>11 hearing, you had earlier testified that you</p> <p>12 believe the Markman hearing generally relates to</p> <p>13 claim construction, how claim elements are</p> <p>14 properly construed.</p> <p>15 If your reference to the Markman</p> <p>16 hearing in this paragraph you said was not to</p> <p>17 threaten litigation, what was it for? Why the</p> <p>18 reference to Markman?</p> <p>19 A It is part of the process in claim</p> <p>20 construction.</p> <p>21 Q And did Swarm agree with Juniper's</p> <p>22 positions that they took in the email</p>	<p>1 charts before the suit was filed because they were</p> <p>2 included with the suit, and that's a public</p> <p>3 document.</p> <p>4 A That is correct.</p> <p>5 Q Okay, thank you.</p> <p>6 Can we pull up Exhibit 28, please?</p> <p>7 Next page.</p> <p>8 Do you recognize this as a Mutual</p> <p>9 Nondisclosure Agreement with RPX?</p> <p>10 A Yes.</p> <p>11 Q Did you ever enforce any sworn patents</p> <p>12 against RPX?</p> <p>13 A No, I did not.</p> <p>14 Q Did you ever threaten to?</p> <p>15 A No.</p> <p>16 Q Was RPX capable of infringing Swarm's</p> <p>17 patents at all?</p> <p>18 A No, because they don't make any</p> <p>19 products.</p> <p>20 Q Were they a potential licensee?</p> <p>21 A No.</p> <p>22 Q Okay. And if there had been a</p>
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<p>1 correspondence with Mr. Fisher regarding the</p> <p>2 interpretation of the claims?</p> <p>3 A No.</p> <p>4 Q No. And is it for that reason that</p> <p>5 you said you didn't think they would prevail at a</p> <p>6 Markman hearing?</p> <p>7 A Correct.</p> <p>8 Q All right. Earlier Mr. Sigler asked</p> <p>9 you if Swarm had prepared claim charts prior to</p> <p>10 suing Amazon, prepared Amazon or AWF claim charts</p> <p>11 before suit.</p> <p>12 A Right.</p> <p>13 Q In your earlier answer, you were</p> <p>14 tentative about that. I just want to ask you to</p> <p>15 refresh your recollection and think about the</p> <p>16 actual Complaint and its exhibits, because you</p> <p>17 reviewed them before they were filed, correct?</p> <p>18 A Correct.</p> <p>19 Q And did they include detailed claim</p> <p>20 charts mapping the claims to Amazon's products?</p> <p>21 A Yes, they did.</p> <p>22 Q So of course you've prepared claim</p>	<p>1 governing law provision in an NDA that designated</p> <p>2 California either as governing law or venue, was</p> <p>3 it your understanding that that governing law</p> <p>4 would direct where the dispute -- where any</p> <p>5 dispute would be brought regarding the NDA, or</p> <p>6 regarding enforcing your patents?</p> <p>7 MR. SIGLER: Objection, form.</p> <p>8 THE WITNESS: Regarding the</p> <p>9 enforcement of my patents? Regarding the -- can</p> <p>10 you -- could you restate the question?</p> <p>11 BY MR. KELLY:</p> <p>12 Q The name of the document is</p> <p>13 Mutual NDA. To the extent that document includes</p> <p>14 a choice of law or venue provision, what's your</p> <p>15 understanding in terms of what that would mean for</p> <p>16 disputes arising out of this document?</p> <p>17 Would that relate to the venue for</p> <p>18 disputes arising out of this document, or out of</p> <p>19 documents unrelated to this document?</p> <p>20 MR. SIGLER: Objection, form.</p> <p>21 THE WITNESS: Well, given the fact</p> <p>22 that this is an NDA between Swarm and RPX, and</p>

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<p>1     Swarm -- I mean RPX cannot make -- does not make      2     any products that can use Swarm Patents, any      3     dispute that would happen have to be related to      4     the NDA.</p> <p>5                 BY MR. KELLY:</p> <p>6     Q   And I think you earlier testified that      7     RPX was not capable of infringing anyway, they're      8     not in the semiconductor business.</p> <p>9     A   Correct, they don't make any products.      10    All they do is they buy patents, and then they use      11    them to develop their business model.</p> <p>12    Q   Okay. So RPX is neither a potential      13    licensee nor a potential infringer?</p> <p>14    A   Correct.</p> <p>15    Q   All right. Could you put up      16    Exhibit 34, please, page 15.</p> <p>17                 BY MR. KELLY:</p> <p>18    Q   Do you recall discussing this document      19    earlier today with Mr. Sigler?</p> <p>20    A   Yes, I have.</p> <p>21    Q   Okay. And regarding the quotes      22    attributed to Xerxes and Leonidas, were those</p>	<p>1     Q   All right. Near the end of your      2     deposition we talked about companies that may have      3     received your business plan, executive summary, or      4     the pitch deck, which we're calling for shorthand      5     "the Triad."</p> <p>6     A   Okay.</p> <p>7     Q   So to your knowledge, did you search      8     through your records and did you find all      9     communications to anyone, whether inside or      10    outside of California, to whom you had sent one or      11    more of those Triad documents?</p> <p>12    A   Yes, and that information has been      13    provided as part of the documentation.</p> <p>14    Q   And to the extent you uncovered any      15    emails or letters or other correspondence with any      16    company inside or outside of California that may      17    have included one or more of the Triad, you      18    included those comments -- or I'm sorry, you      19    included those communications in yesterday's      20    disclosure, didn't you?</p> <p>21    A   Yes. Yes, all those companies are      22    included in the answers to the interrogatories.</p>
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<p>1     threats to sue?</p> <p>2     A   No. Those are quotes from a book.      3     They're meant to be used for motivational      4     purposes.</p> <p>5     Q   And this is part of a pitch deck,      6     right?</p> <p>7     A   Correct.</p> <p>8     Q   From a start-up company?</p> <p>9     A   Right.</p> <p>10    Q   From a pre-revenue company?</p> <p>11    A   Correct.</p> <p>12    Q   So these are aspirational and were      13    never intended to be as threats; is that correct?</p> <p>14    A   That is correct.</p> <p>15    Q   Do you think that any reasonable      16    recipient of this document would interpret that as      17    being threatened with a lawsuit?</p> <p>18    A   No.</p> <p>19    Q   And in fact, that language went      20    primarily, if not exclusively, to investors, not      21    to potential licensees?</p> <p>22    A   That is correct.</p>	<p>1     Q   Is Andreessen Horowitz one of those      2     companies?</p> <p>3     A   Yes.</p> <p>4     Q   Is Bomming Star Venture Capital one of      5     those companies?</p> <p>6     A   Yes.</p> <p>7     Q   Is Playground Global one of those      8     companies?</p> <p>9     A   Yes.</p> <p>10    Q   Founding partner at Gradient Ventures?</p> <p>11    A   Yes.</p> <p>12    Q   Lux Capital?</p> <p>13    A   Yes.</p> <p>14    Q   A gentleman named Peter, private      15    investor?</p> <p>16    A   Yes.</p> <p>17    Q   John Jeffries of Samsung Partner?</p> <p>18    A   Yes.</p> <p>19    Q   And Nexstar Partners?</p> <p>20    A   Yes.</p> <p>21    Q   Intel Capital?</p> <p>22    A   Yes.</p>

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<p>1 Q Khosla Ventures?</p> <p>2 A Yes.</p> <p>3 Q A gentleman you referred to as Jabil?</p> <p>4 A Yes.</p> <p>5 Q Nvidia Business Development?</p> <p>6 A Yes.</p> <p>7 Q Samsung Research America?</p> <p>8 A Yes.</p> <p>9 Q Bonzon (ph) Capital?</p> <p>10 A Yes.</p> <p>11 Q Other than that list that we've just</p> <p>12 gone through, did anyone else receive one or more</p> <p>13 of the Triad documents from or on behalf of Swarm?</p> <p>14 A No.</p> <p>15 MR. KELLY: I have no further</p> <p>16 questions.</p> <p>17 MR. SIGLER: I have no follow-up</p> <p>18 questions. Thank you for your time today,</p> <p>19 Mr. Íñiguez.</p> <p>20 MR. KELLY: Thank you, Mr. Sigler.</p> <p>21 We'll read and sign.</p> <p>22 THE VIDEOGRAPHER: Okay, we are going</p>	<p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, DAWN A. JAQUES, a Notary Public in and for</p> <p>3 the Commonwealth of Virginia, before whom the</p> <p>4 foregoing deposition was taken, do hereby certify</p> <p>5 that witness whose testimony appears in the</p> <p>6 foregoing pages was duly sworn by me; that the</p> <p>7 testimony of said witness was taken by me in</p> <p>8 shorthand at the time and place mentioned in the</p> <p>9 caption hereof and thereafter reduced to typewriting</p> <p>10 under my supervision; that said deposition is a true</p> <p>11 record of the testimony given by said witness; that</p> <p>12 I am neither counsel for, related to, nor employed</p> <p>13 by any of the parties to the action in which this</p> <p>14 deposition is taken; and, further, that I am not a</p> <p>15 relative or employee of any attorney or counsel</p> <p>16 employed by the parties thereto, nor financially or</p> <p>17 otherwise interested in the outcome of the actions.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <hr/> <p style="text-align: right;">Dawn A. Jaques, CSR, CLR Notary Public in and for Commonwealth of Virginia</p> <p>My commission expires: August 31, 2023 Registration No. 132328</p>
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<p>1 off the record. This deposition is concluded at</p> <p>2 3:02 p.m.</p> <p>3 (Whereupon, at 3:02 p.m. Pacific Time,</p> <p>4 the taking of the deposition was</p> <p>5 concluded. Reading and signature</p> <p>6 were RESERVED.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 Alfonso Íñiguez, c/o</p> <p>2 Beus Gilbert McGroder</p> <p>3 701 N. 44th Street</p> <p>4 Phoenix, Arizona 85008</p> <p>5</p> <p>6 Case: Juniper Networks, Inc., et al., v. Swarm Technology LLC</p> <p>7 Date of deposition: May 14, 2021</p> <p>8 Deponent: Alfonso Íñiguez</p> <p>9</p> <p>10 Please be advised that the transcript in the above</p> <p>11 referenced matter is now complete and ready for signature.</p> <p>12 The deponent may come to this office to sign the transcript,</p> <p>13 a copy may be purchased for the witness to review and sign,</p> <p>14 or the deponent and/or counsel may waive the option of</p> <p>15 signing. Please advise us of the option selected.</p> <p>16 Please forward the errata sheet and the original signed</p> <p>17 signature page to counsel noticing the deposition, noting the</p> <p>18 applicable time period allowed for such by the governing</p> <p>19 Rules of Procedure. If you have any questions, please do</p> <p>20 not hesitate to call our office at (202)-232-0646.</p> <p>21</p> <p>22 Sincerely, Digital Evidence Group Copyright 2021 Digital Evidence Group Copying is forbidden, including electronically, absent express written consent.</p>

5/14/2021 Juniper Networks, Inc., et al., v. Swarm Technology LLC Alfonso Íñiguez  
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